

PROCEEDINGS

of a

MILITARY COURT FOR THE
TRIAL OF WAR CRIMINALS

held at

LUNEBURG, GERMANY

on

MONDAY 12 NOVEMBER, 1945,

upon the trial of

JOSEF KRAMER

and

44 Others.

F O R T Y - N I N T H D A Y

Transcript of the Official
Shorthand Notes.

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At 0930 hours the Court reassembles pursuant to adjournment, the same President, Members and Judge Advocate being present.

The accused are again brought before the Court.

CAPTAIN PHILLIPS: I had reached on Saturday the point where I was dealing with the evidence against particular accused, and I was just about to start on No. 30, Frieda Walter.

The first affidavit against her is on page 137 of the bundle, Exhibit "81", the deposition of Alexandra Siwidowa. That, you will remember is the allegation that this accused, when in charge of the working party in the garden was guilty of beating both the deponent and others with her hands and with the wooden part of spades and other implements.

Now there is no dispute that this accused did work in the garden and that she was in charge of the garden kommando. The dispute again, as in most of these cases, is as to the amount of force used, and the witness told you that she had in fact struck this deponent with her hand but she denies the what I shall call the force used, and she also denies the reason why she did it.

She says that it was done because the deponent was stealing, and the deponent says it was because she, the deponent, did not know German. There is very little more I can say about this particular affidavit, except to suggest to you that the witness, when she gave her evidence, was a very frank straightforward witness, and she admitted straight away that she had struck this woman on the face, so I do not propose to say any more about that particular affidavit.

The next one of any interest is on page 161, which is Exhibit "87" and is the deposition of Edith Treiger. What she says is that this accused was supervisor of kitchen No. 2 at Belsen and that she used to beat women practically every day. In my submission that suggests that the accused must have been in the kitchen for quite a long time if she beat people practically every day. We have, however, her own evidence which, I think, has not been challenged, that she was only in that kitchen on two days, namely, the 14th or 15th April, that is, just before the place was liberated.

There is no internal evidence in the affidavit itself from which it can reasonably be suggested that the deponent was referring to some other kitchen. Therefore I suggest that this again is a case of mistaken identity and that the deponent may well have seen these things happening but she did not see this accused doing it.

On the next page, page 162, we come once more to the deposition of Luba Triszinska, and this deponent says very much the same sort of things about this accused as she has said about all the others of my accused. She says that they used to beat every day with a heavy stick.

I will not go into the creditability or otherwise of this particular deponent, because I dealt with it fairly fully on Saturday and there seems to be a certain amount of doubt at least from the evidence of Kipper as to whether she ever was a nurse in charge of the Dutch babies or not. But that is not really the foundation of what I am putting before you. My submission is that it is entirely a question of degree, because as you know, this accused has already admitted that she did in fact hit people now and then when it was necessary in the course of her duties, and my submission is that the deponent has exaggerated it out of all conscience.

That is, I think, all the evidence against this accused, except for that contained in the statement of the accused Ehlert, in which she originally said that she had heard that Frieda Walter had often beaten. In her evidence in chief she withdrew the word "often", for what it is

worth, and when she was re-examined by my friend Major Munro she said that she had never seen Walter beat anybody herself.

She also produced in her statement this curious story about the young Rottenfuhrer. I do not think it takes anybody very far, and she has withdrawn it and put it back again so often that I do not know where we are with regard to it, but as I say, it does not really take anybody very far. It is, in the case of this accused, entirely a matter of degree as to what the Court believes was the extent of her beating.

There is one general point I would like to deal with now, and it refers both to this accused and all the others who worked near cookhouse No. 3. Some of them said that they did not see many corpses lying about, and that has caused a certain amount of surprise, possibly having regard to the corpses that were found in Belsen, and I would like, if you have the plan handy, to draw your attention to one or two pieces of evidence.

Brigadier Glyn-Hughes, when he was giving evidence, spoke particularly about women's compound No. 1 - that is the compound in which cookhouse No. 3 is situated - and he said that there was an enormous pile of corpses beside block No. 208, which you will see is some distance away from the cookhouse itself. We also have the evidence of Unterscharfuhrer Muller and of Brigadier Glyn-Hughes himself that the whole of that compound was dotted around with trees, and I think the Court probably saw them when they went there.

Mr. Le Druillenc, in his evidence, said that it was the habit at Belsen, when you had not got any work to do, for people to sleep in what he called heaps. Those were his own words, to sleep in heaps outside their huts one on top of the other.

Finally, you may remember the evidence of Starostka, who told us that when you were going to cookhouse No. 3 from the S.S. quarters, you go along that little road and you pass huts on the right and on the left, and she told us that those huts were all occupied by the working parties. The point I am making is this, that anybody going from the S.S. quarters to the cookhouse where they worked might very well not in fact see a lot of corpses, because on the one hand you pass through huts which are occupied by healthy people, and on the other hand the heap of corpses itself is a long way off, and finally it was apparently the habit for people to gather together in clusters on the ground when they were not in fact corpses.

I merely mention that in passing because it might be a matter of comment otherwise that these accused said that they did not see a lot of corpses lying around.

(So far as Frieda Walter is concerned, there is no live witness who has testified against her. The evidence against her is purely affidavit evidence) and I have already made clear my submission on the validity of these affidavits. (She was in fact recognised by one witness, Zylberdanten, who had nothing to say against her, and again it is a point I would make that she too worked in a very public place in one of these cookhouses) and it is a point which the Court should note that no live witness - and many of them must have seen her - has said a word against her.

The next and last of my accused is No. 39, Irene Haschke and she is the only one who has been accused by a live witness, and I will deal with the oral evidence first of all, before I get on to the affidavits. There is first of all the witness Hanka Rozenwayg, whose evidence is in volume 10 of the transcript at pages 19 and 24.

That is the incident, you will remember, where she said that Haschke pushed somebody into one of these concrete ponds and the woman drowned. She originally said in her evidence that this took place near kitchen No. 1. Now, of course, (the accused Haschke never in fact worked in

kitchen No. 1.> When I cross-examined the witness I tried to get her to be more precise as to where this incident in fact did take place in case it should, at a later stage, be said that when she said kitchen No. 1 maybe she meant kitchen No. 3, and I did not altogether succeed because, looking back on her answers now that we have a plan and now that we know a little more about the lay-out of the camp, they do not seem to mean anything at all.

I asked her which cookhouse and she said, "In cookhouse No. 1 at Belsen". I said, "Whereabouts was that in the camp", and she replied, "It was in camp No. 2". - presumably she means compound No. 2 - "we had to pass through compound No. 1 in order to reach compound No. 2". Then I asked her: "When you say compound No. 2. can you tell me exactly what you mean by that? (A) There are two compounds there, one for the people who were fit for work and the other for ill people. Compound No. 2 is the one which was used by the people who were ill".

I must confess that I am totally unable to place that description anywhere in Belsen as we know it. One is, therefore, rather thrown back on her original statement that this incident took place beside cookhouse No. 1. We also have evidence, and it is clear from the map, that there is in fact a pond outside cookhouse No. 1.

The accused Haschke actually worked for most of the time in cookhouse No. 3 and there is not marked on the plan any pond near cookhouse No. 3, though one witness, I think it was Starostka, put a pond somewhere about 200 yards from cookhouse No. 3. So far as the evidence of the witness herself goes, there is not a lot one can say about it. She starts by saying that the accused pushed this woman in and she ends up by saying that she picked her up and tossed her in, which is possibly just one of the little bits of exaggeration one does get with these witnesses.

But my submission on this allegation is that it has not been shown beyond all doubt to relate to this accused, and the most reasonable explanation, in my submission, is that she was talking about somebody quite different and not about Haschke at all.

The next live witness was Ilona Stein, transcript No. 9, pages 16 and 23. She accuses Haschke of beating with a variety of implements in the neighbourhood of the cookhouse, and in this particular case there is not, I think, a dispute as to which cookhouse it took place at, and it may very well be that she is speaking of this particular accused.

There are merely two points to which I would draw the attention of the Court. One is that the witness herself, describing one occasion when the accused beat her says: "I ran away and she left her arm in the air", which is a very graphi way of describing what, in my submission, really happened, namely, that the accused was not attempting to beat these people at all, that she was merely trying to drive them away from the cookhouse.>

The witness herself has admitted that the cookhouse was very often surrounded by a whole throng of people, of whom she was one, trying to get extra pieces of food and trying to pick up potatoes and so on. Under those circumstances it is not unnatural that the accused should occasionally, as it were, sally forth from the cookhouse and try and clear these people away, and I suggest that the account of it here given, the use of the rubber hose and heavy stick and all that sort of thing, is completely exaggerated and that what really happened is what I said, that all she was doing was trying to clear these people away from the cookhouse.

When she gave evidence herself, she was asked how violently she beat these people, and she said: "They did not wait for it", in other words, that bears out what I am saying, that what she was trying to do was to get rid of all these people and she was not interested in giving some violent or sadistic beating.

That concludes the live witnesses. There are, in addition, three affidavits which do not amount to a great deal. There is the affidavit of Katherine Neiger on page 111, which is Exhibit "66". She says that Haschke was always beating sick girls - it is just one sentence.

There is the affidavit one more of Luba Triszinska, who says very much the same about this accused as she did about the others, and there is the statement of the accused Ehler. Those three do not really go into any detail. They merely say that Haschke used to make a practice of beating people, and if my explanation is the right one, that it was her custom to drive these people away from the cookhouse, it may very well be that an onlooker, or somebody not concerned with what was going on, would get the impression that she was always beating.

That concludes all the affidavits and all the live witnesses against all four of my accused, unless there are any particular ones the Court would like me to deal with which I have not dealt with fully.

THE PRESIDENT: No, I think you have covered it all.

CAPTAIN PHILLIPS: Now the view in general which I ask the Court to accept of these four accused - and they are all very much in the same position - is that they arrived in Belsen late in February or the beginning of March, at a time when conditions were completely and utterly chaotic and that under the circumstances, irrespective of whether it was correct or not, under the Regulations, they did in fact occasionally hit people - when I say "hit" I mean slap or box over the ears - they never did it for their own gratification because they were cruel or sadistic, but merely in the course of their work because there was no other thing that they could have done. For example Charlotte Klein, when distributing the bread, it is quite obvious that her bread cart would have been besieged by a lot of hungry internees, and the only thing for her to have done under those circumstances was to drive them away and to have acted correctly under the Regulations and to have reported the matter day after day and occasion after occasion, would have been a complete and utter waste of time.

That is the view which I ask the Court to accept of these people's behaviour, and the Court may well think that if the matter rested there not a great deal would have been proved against them. But, of course, the matter does not rest there, and what is being said of these four accused is that under this charge they, as a result of their behaviour, may be said to be responsible for all the conditions at Belsen which resulted in the death and the suffering of a large number of Allied nationals. Therefore, it is necessary now to consider for a moment or two the conditions at Belsen and how and when those conditions came about, and I will refer first of all to the evidence of Brigadier Glyn-Hughes, which is in volume 2 of the transcript, to the evidence of Dr. Wiesner and to the evidence of Dr. Leo, in volume 1 of the transcript.

THE JUDGE ADVOCATE: I should be prepared to accept what Captain Phillips says instead of checking it all up.

A CAPTAIN PHILLIPS: Very well, sir. Brigadier Glyn-Hughes told us a number of things about Belsen, and he told us this for a start. He said that it would take between two to three months to produce the conditions of starvation and death which were found on the liberation - that is the 15th April - assuming that when people arrived in Belsen they were what he described as robust. He then said that the principal cause of the death in Belsen was, in the first place, lack of food, in the second place lack of washing facilities which in its turn led to lice which in its turn led to the spread of typhus.

B He also said that even after the liberation matters were not easy in the way of food in spite of the facilities which the British had, because special feeding was necessary and you cannot feed bully and biscuits to a man who has been starving for a long time; he requires a special diet.

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X 1 He also told us that to cope with the situation which was found at Belsen he had 54 officers and 307 other tanks all of whom came from medical units, and that he had those within a day or two of the liberation.

He was asked by the learned Prosecutor in re-examination: "Was that number of medical personnel necessary to deal with the conditions as you found it, or would it have been necessary for the normal running of the camp?", and he replied that it was necessary to deal with the camp as he found it. Therefore the question which is very material in the case of my accused is how long these conditions had existed at Belsen, because if Brigadier Glyn-Hughes required 54 and 307 while Kramer had a mere two doctors to assist him, it is difficult to see how my four accused can be held responsible for conditions at Belsen if in fact those conditions already existed when they arrived at the camp.

Now the Court will remember that the date they arrived at the camp was right at the end of February. We can get a lot of information as to how long these conditions had existed from the evidence, first of all, of a man called Wiesner, whose affidavit is on page 175, Exhibit "93".

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B I would just like to read from about half way down: "I cannot give an estimate of the deaths that occurred during the whole year I was here, as conditions grew worse and worse as other camps were evacuated into this camp. I estimate that during the last three months there were 25,000 deaths. In many cases" - this is the point which I wish to draw to the attention of the Court - "half of the prisoners were dead in the railroad carriages that brought them here". It also appears from his evidence that typhus was in the camp shortly after the beginning of this year.

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4 I will now turn to the evidence of Dr. Leo. He, you will remember, arrived in Belsen in the beginning of February, 1945, and this is what he says about the conditions there, and the condition of the people arriving. He is asked by the learned Prosecutor: "Will you describe the condition in that block?", and he replies: "One day a bigger transport of 2,000 people came from the southern part of Germany. Already during the transport, during the voyage, 400 of them died and the others were so weak that they had to be helped at every step". In other words, you have already got coming into the camp transports one fifth, in this case, of whom are dead, the rest of whom are already weak, and who, judging from Brigadier Glyn-Hughes' evidence, would in fact require special feeding.

He goes on, when cross-examined by my friend Major Cranfield, as follows: "(Q) Were large transports arriving frequently with the majority of the persons in a dying condition? A Many transports arrived every week; as a rule one third of the people were dying or died." It goes on: "(Q) You have told us that in addition typhus was raging. Were the conditions in general chaotic and quite out of control? (A) All of it was general chaos". And then he was asked: "(Q) Now I want to ask you of your experience during ten years in concentration camps. Were the conditions at Belsen during the last month" - the last month, if we take it very accurately will mean from March 15th to April 15th, and I do not think it was either intended by the questioner or by the witness to refer merely to the fifteen days in April - "far worse than anything you have experienced before? (A) I have witnessed many chaotic situations in the camp at Buchenwald, but Belsen was by far the worse of all".

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iv In other words, it is perfectly apparent from that evidence coupled with the evidence of Brigadier Glyn-Hughes, that at the time when my accused arrived at Belsen at the end of February or the beginning of March, you have already got typhus in the camp, you have already got coming into the camp people who are dead, you have already got coming into the camp people who are dying, and you have already got coming into the camp people who are half starved and therefore requiring the special feeding we have been told about.

Those are the conditions for which my accused are said to be responsible. Dr. Leo on page 29, also says that the fault is very largely due to what he calls the S.S. leaders. There was a certain amount of discussion as to what he meant by "S.S. Leaders", and he said it was their fault because the S.S. leaders well knowing about the conditions of the camp did not hesitate to throw in more and more thousands of prisoners.

Well, whatever is meant and whatever the witness meant by "S.S. leaders", it is quite clear, of course, that he did not refer to people of the status of any of my four accused.

Now it is with that as a background that, in my submission, one must consider the guilt or otherwise of these accused. A good deal has been said about Regulation 3(2) and its effect upon this case. I do not propose to discuss its meaning because, having considered it at some length, I find it difficult to understand what it does mean, if it does mean anything, but Captain Roberts has already pointed out to the Court that it cannot apply until the Prosecution have proved that there was in fact concerted action. That, at least, is fairly clear from the Regulation itself, and I accept and adopt all that he has said on the subject of concerted action.

Before I leave that Regulation I would point out this, that the Royal Warrant, of which it is part, is not a document which can affect the body of International law; it is a document which merely can lay down the rules of procedure and the rules of evidence for trials of this sort. It cannot - and if it claims to do so it is wrong - alter the substantive body of International Law. If one looks at the Warrant itself, at the preliminary part of it, it says: "Our Will and pleasure is that the custody, trial and punishment of persons charged with such violations of the Rules and Usages of War shall be governed by the Regulations attached to this Our Warrant".

In other words, <it only clearly sets out to deal with the procedure matters and if you look at the Warrant you will find - I do not want to go into it in detail - that every section of it deals with such matters> the constitution of the Court, the admissibility of evidence and so on. I say that <when interpreting the meaning of Regulation 3(2) it should be borne in mind that the Warrant does not set out, and indeed it cannot set out, to alter the substantive law.>

THE JUDGE ADVOCATE: Is that true of Regulation 1? What I feel, Captain Phillips - and you may like to deal with it - is that in my view the Court have been directed to deal with an alleged war crime and for their guidance in Regulation 1 it defines what a war crime is for the purpose of this Court. As I understand it it says, in effect, that the Court have to be satisfied that the charge sheet sets out, in the opinion of the judges on this Court, a violation of the Laws and Usages of War. If the Prosecution establish that then it becomes a war crime and the accused who are convicted of the war crime set out in the charge shall be punished. But surely Regulation 1 is the most important Regulation in regard to the Court deciding what are the legal matters which they have to consider as constituting the offences before them, and it is quite distinct and outside merely procedural matters. I do not know whether you agree or disagree with me, but if you disagree with me you are quite entitled to put your point to the Court.

CAPTAIN PHILLIPS: What I would say about Regulation 1 is that it is merely indicating to the Court and any Court that sits under this Warrant, what are the matters of law which it has to apply. It does not set out to alter the contents of those laws; it merely says that this is a body of Regulations for dealing with the trial of war criminals. It then <tells the Court what body of law is to be applied in such trials, namely, in this case, the Laws and Usages of war, but it does not set out anywhere so far as I can see to either add or to alter the content of that body of the Laws and Usages of War.> That is by way of being a preliminary Section in which it tells the Court what law they have to apply and it then goes on to deal with procedural matters and matters of evidence.

I do not, as I say, wish to deal at any length with Regulation 5(2), beyond making the point that, in my submission, it is purely a procedural Regulation, because the question as to whether or not these accused can be found responsible for the conditions at Belsen - and that is what they are being charged with - is really entirely fundamentally the question of common-sense and nothing more and nothing less.

One has to apply some sort of test to decide whether they have had or had any responsibility for those conditions and, in my submission, the test and the only test which can be applied to these and any other accused, as to their responsibility is the degree of control which they either did or could exercise over the conditions in general, and I would put it this way.
"You cannot hold a man responsible for any state of affairs unless he had an opportunity to control that state of affairs." That, surely, in everyday life is the normal test of responsibility. You cannot be responsible for something unless you can either make it better or make it worse. If you are driving a car and you run over somebody you are responsible because you have control of the car and you are driving it. But surely nobody can say that these accused had the slightest control or could have had the slightest control over the conditions at Belsen.

What in fact did they do? Charlotte Klein issued the bread which she did, I have no doubt, to the very best of her ability, such bread as there was to issue. Frieda Walter was in charge of the garden; Irene Haschke was in charge, or partial charge of the cookhouse, and Herta Bothe was in charge of the wood yard.

How can it possibly be said that four people, having such jobs as that, can be responsible for the general conditions which have been described as chaotic, and the general conditions which already existed, to a large extent, when they arrived at the camp? I do not dispute, of course, that many people died and that many people suffered at Belsen. It is entirely a question of where the Court is going to draw this line of responsibility and in this connection I would refer you to a final passage in the Manual of Military Law. It is on page 342, a chapter on War Crimes, chapter 14. It says there: "Charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. In every case, however, there must be a trial before punishment and the utmost care must be taken to confine the punishment to the actual offender", and it is just those last words to which I would direct the attention of the Court: "The utmost care must be taken to confine the punishment to the actual offender", because, in my submission, that is precisely what the Prosecution are attempting not to do in this case. They are attempting to extend the responsibility and therefore the punishment, to a far wider class of people than can in any reasonable view be said to be responsible.

That brings me to the end of all I have to say, except this. I have no perorations to finish up what I have to say, but there is just one final point. There is a danger in a trial of this sort, where the evidence is so extensive and the arguments so prolonged, that the issue may be fogged and lost in a mass of detail. Therefore I would like, at this stage, right at the end, to summarise the points which, in my submission, the Prosecution must prove if these people are to be convicted, and there are six points which, in my submission, the Prosecution must prove.

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The prosecution must prove, first of all, that what has happened at Belsen was contrary to the Laws and Usages of War; that it was in fact a war crime. That is the first point.
They must secondly satisfy the Court that the defence put forward by Colonel Smith is not open to the accused, and that defence really comes under three heads. First of all the conflict of German law and International law; that is the second point.

<The third point is the defence of superior orders with regard to the view put forward by Colonel Smith, under the unamended Manual. The fourth point is the point which I put forward on Saturday, the defence of superior orders under the amended Manual.>

Those are what one might call preliminary points, but having satisfied you on those points <the Prosecution must then satisfy you either that these accused have themselves directly with their own hands killed or caused physical suffering to an Allied National or, if they fail to do, they must satisfy you that these accused were, for some reason which they must explain to you, responsible for the general conditions at Belsen.> Unless the Prosecution can do that then these four accused are entitled to be acquitted.

CAPTAIN BOYD: I represent No. 40, Fiest, No. 41, Sauer and No. 42, Lisiewitz, who are all concerned on the Belsen charge only.

I want to adopt, generally speaking, what has been said on the question of witnesses and affidavits by former Defending Officers, but there is one point on the identification that I would like to make. We were told by the accused Starostka that generally speaking a prisoner would recognise an S.S. person not by their face but by their figure, and I think, bearing in mind the evidence we have heard throughout the case, starting with Brigadier Glyn-Hughes, who you remember told us that even after the liberation the prisoners seemed afraid to face up to the S.S. Other Prosecution witnesses have told us that they made themselves very scarce when they saw S.S. coming, and I would submit that it is quite clear that what was important to a prisoner was possibly the figure of the S.S. and probably even more so the walk and the bearing. Of course, those are just the things that you do not get in a photograph.

A photograph relies largely on the face and possibly to a certain extent on the figure, but bearing and walk and things like that are entirely absent. I think that is aggravated to some extent by the photographs used in this case, because so many of the accused are in a very dishvelled state and, in my submission, the effect of that is that every identification by photograph must be suspect and, indeed, I think valueless where the details given of job and date and things of that sort are not marked, and that applies, of course, even when the witness is honest.

I will take the evidence against my three accused separately. The first is Fiest who, you remember, was one of the factory women from Silesia who was conscripted into the S.S. in August, 1944, and did the usual so-called course at Langenbilau. She arrived in Belsen about the 2nd February, and spent something like a fortnight on odd jobs of various sorts and then came into women's compound No. 2 as an aufseherin, where she told us she was responsible for general order and cleanliness - what the Prosecutor called, I think, policewoman's duties.

The first evidence against her that I want to deal with is contained in the deposition of Margarete Berg, which is page 3 of the book, Exhibit "17". It is paragraph 3 of that deposition. It makes an accusation which she alleges took place while Fiest was marching a party out to collect grass for filling mattresses. Here again the identification is by photograph and I think that is important when we remember that we have been told by several witnesses that <working parties in fact were not taken from women's compound No. 2.> You will remember Fiest told us that she did not march a working party out to collect grass.

<Volkenrath told us she could not remember any working parties being taken from women's compound No. 2 at all, and Starostka told us that she remembered one which I think was a wood kommando, and she also told us where all these kommandos did in fact live, and it was not in women's compound No. 2.

That is my first point on that affidavit. My second point is that it does not in any case amount to an accusation of Fiest. What the affidavit says is, "The parade was escorted as far as the gate of the camp by S.S. woman Gertrude Fiest. As we got near to the gate one of the women collapsed and the S.S. woman immediately came out and kicked her in the back". We have heard how all these working parties were checked out at the gate. We have been told how somebody at the gate waited in the blockfuhrer's hut and saw that each party going out had an aufseherin with it.

In my submission what this affidavit quite clearly means is that as the party was marched down by Fiest, when it got to the gate somebody else came out. If it means that Fiest in fact did the kicking then the words "came out" are quite meaningless and, in my submission, on its ordinary natural meaning that affidavit cannot be an accusation against Fiest.

THE JUDGE ADVOCATE: Does not the deponent say the party was escorted as far as the gate of the camp by the S.S. woman Gertrude Fiest?

CAPTAIN BOYD: Yes, Yes.

THE JUDGE ADVOCATE: "As we got near the gate one of the women collapsed and the S.S. woman immediately came out and kicked her in the back". Are you submitting that the deponent does not mean that after she had left the kommando she then came out and did what is alleged?

CAPTAIN BOYD: I am afraid I do not get your point. Do you mean that Fiest left the party and came back to it?

THE JUDGE ADVOCATE: Is the deponent not saying: "The party was escorted as far as the gate of the camp". You are arguing that she was still escorting the party.

CAPTAIN BOYD: Yes, and to say that she came out, if she was escorting the party, in my submission is nonsense. I submit that that is the natural meaning, but I will take it further, and in my submission even if two meanings are possible on this affidavit then you must accept that most beneficial to the defence. In other words, the affidavit must be strictly interpreted against the Prosecution.

I base my argument on that point on this. I think there is a well established rule of law that where a public document is used by the Crown it will be strictly interpreted against the Crown. I do not claim that this is a public document, but in my submission the basis of the rule is that the Crown is responsible for the making of the public document and therefore that is the reason why it must be strictly interpreted against them. Exactly the same applies in this case. The deposition has been made for the purposes of this trial; it has been made without the accused being present or having any chance in any way to influence the making of the document, and I therefore submit that the Court is bound to accept any interpretation that is more favourable to the defence.

Now the next witness is an oral witness, Anita Lasker, who related the incident about when Fiest made some prisoners kneel down. She said the reason for that was that they had been stealing turnips, and you will remember that in substance Fiest did admit that charge. She said, I think, there was no snow and, in my submission, that is an obvious bit of embroidery by this witness, because quite obviously there was no snow in March or April.

There was another affidavit, Katherine Neiger, which made accusations in respect of appel, that Fiest made appel last as long as possible. We have heard a lot about appel and I have no doubt that to people standing without watches it did seem very long but, of course, it is quite

clear, I think, (that all the time appel was going on the S.S. themselves had to be on parade.)

Foest told us it lasted about an hour and a half, perhaps two hours, and we have heard something of the difficulties that they had in carrying out this appeal. I would say further that in my submission it was quite clearly done on orders and, if necessary, I will rely upon the defence of superior orders in that respect.

The only other evidence against this accused are the affidavits of two of the other accused, Ehlert, who says that she had the reputation of being very severe - I do not think that is very serious. The word "severe" in German is "streng", which is also used for strict.

Then we had the affidavit of Lobauer. We have heard how she withdrew a good deal of that in the witness box. I do not want to make much of a point of that, because I think quite obviously Lobauer was a thoroughly unreliable witness.

The Court will remember she spent a very long time indeed in both Auschwitz and Belsen and, in my submission, the very odd thing about the affidavit she makes is the people she accuses. She accuses Fiest and Sauer who, you remember, both worked in women's compound No. 2. Lobauer can rarely ever have seen them, because, of course, she was concerned with working parties and working parties had nothing to do with that compound. She charges Herta Bothe and Weingartner, who seems to have been the butt of the women's compound.

The other point I would make on her affidavit is that she is the only witness at all who accuses Fiest of beating.

The accused was also recognised by the Prosecution witnesses Dimko and Hammermasch, who made no accusation at all against her, so that out of three witnesses in Court who recognised her only one made any allegation at all.

The other point I would make is that she worked for something like three weeks or a month in women's compound No. 2 taking the appel on which there were 6,000 women, and the result altogether is three accusations against her. In my submission you should accept her story on the kneeling incident, which is very similar to Lasker's, that she did not make appel last longer than necessary, and that all the beating she did was slapping of faces when she found people stealing.

The only other thing I would like to mention on that evidence is that of course none of the people who are alleged to have been ill-treated are named. They are called Allied nationals, but we are not told what their nationality is.

My next accused is Sauer, No. 41. She also was one of the factory women conscripted in Silesia and she also arrived at Belsen on the 25th February after various odd jobs. She finally took up a regular job in the bath house, somewhere about the middle of March, except that when men were in the baths she told us she assisted Fiest in women's compound No. 2, and finally, the last three days, the 9th, 10th and 11th April, she was in cookhouse No. 2 in place of Hempel.

The first accusation against her is by Maria Neuman in her affidavit on page 115, exhibit 67. In my submission this case is clearly one of mistaken identity and I think the first point I will make is to try to determine where the offence is actually alleged to have happened. The Court will see that in paragraph 2 the deponent relates an incident in which she alleges Sauer took part, an incident which happened outside No. 1 kitchen at Belsen camp, and in the third paragraph she relates an incident in which she alleges the accused Francioh took part, also outside No. 1 kitchen at Belsen.

Of course, neither Sauer nor Francioh ever worked in No. 1 kitchen at Belsen. We have been told by Ehlerth that she did not know the numbers and that she used to call the two kitchens in the women's compound the first kitchen and the second kitchen, and you will remember that numbering has on several occasions been adopted by the learned prosecutor and, of course, Francioh did work in the first part of kitchen No. 3.

In my submission it is clear when the deponent talks about No. 1 kitchen she in fact means the first part of kitchen No. 3, and that is rather borne out by the fact she says she was a trained nurse and that she was known as a trained nurse to Dr. Klein, and she was working in one of the hospitals and, of course, the hospitals were in the back part of the women's compound.

The next point is we have been told that an aufseherin called Orlt worked there and we were also told that that aufseherin Holt was very like Sauer; I think Ehlerth said she was very similar to Sauer. Ida Forster seemed to find them almost exactly alike, Sauer and Orlt, and finally Kopper also found her very similar.

In my submission, bearing in mind that this is photographic identification and that, as I said before, their faces are very similar, I think it is quite clear that in this case the incident related in fact should have been related about Aufseherin Orlt and not about Sauer who, of course, never worked in either kitchen No. 1 or No. 3.

There are three prosecution witnesses who came here and made accusations in respect of Kitchen 2; they were Sunschein, Klein and Lasker. You will remember Sunschein was the kapo in the kitchen and she said that Sauer used to beat with her hands when they tried to steal, and she also said that Sauer was there only for a very short time. Charlotte Klein again also said she beat people when they tried to steal. She said they started working at the very end when she succeeded the other aufseherin, Hempel, who went ill on the 8th April. It is quite clear that Sauer was in that cookhouse for three days, on the 9th, 10th and 11th, but Klein said she beat with a whip. I do not want to say anything more about Klein. I think a good deal has been said about her already, and, in my submission, she was a very unreliable witness indeed.

The third witness was Lasker who also said that she saw Sauer beating with a whip, and she seemed to think that Sauer had been there for about two or three weeks and not two or three days. Lasker, of course, was a German girl, you will remember, who had also been in Auschwitz and Belsen for a year and a half and, curiously enough, again like Lobauer, she only made accusations against very small people. I think it is quite clear that she has exaggerated her account of how First made these people kneel and, in my submission, she has quite clearly embroidered her evidence in this case. I think it is quite obvious that Sunschein, who appeared to be a very honest witness, would not have said that Sauer beat people only with her hand if in fact Sauer had used a whip. In my submission the court should accept Sauer's story that she beat people only with her hand and only for stealing.

The next witness was Catherine Neiger who in her affidavit accused Fiest of frequently beating girls without reason. She also said she never allowed any girls to rest during the day time, which is the sort of accusation with which it is a bit difficult to deal. Sauer has told you that she never beat people without reason and, in fact, the witnesses who have appeared here have said that when she did beat people it was because they were trying to steal. With regard to her not allowing people to rest during the day time, I do not quite know what that accuses her of doing.

The only other evidence against Sauer is again contained in the affidavits of Ehlert and Labauer, who say exactly the same about Sauer as they do about Fiest. In my submission, it is quite clear that in Sauer's case, the only beating she did was necessary in order to prevent stealing.

My next accused is Hilde Lisiewitz whom, the court will remember, was very young. She is only 23 years of age, and was also a factory girl conscripted from Silesia. She arrived in Delsen on the 3rd March. She did a whole variety of jobs until round about the beginning of April she was ill and almost retired until the British came. All the evidence is in affidavit form, and there are two allegations against her. She is also mentioned favourably by Ehlert in her affidavit.

The first affidavit is that of Dora Almaleh, who recognises her by a photograph and then goes on to relate an incident which she alleges took place whilst Lisiewitz was in charge of the kommando carrying vegetables round to the kitchens. Of course, Lisiewitz was in charge of that kommando, first of all for a week somewhere about the middle of March, and again for half a morning on the 1st April. It was on that morning, the 1st April, when she finally went ill. She had already been ill once, and on that morning she went ill again. You will remember Doctor Klein told us that she had a very high temperature and he was not sure whether it was typhus. At any rate, he thought she was ill for a long time, and I think it is quite clear that a girl who was about to go down with suspected typhus could not be in a fit state to carry out the feats alleged in this affidavit.

The learned prosecutor in cross-examination did put it to her that the events happened in March. Well, the affidavit says April, but that is only a small point. It could not have happened in April, but I think it is material because the identification is by photograph. There must have been a great number of aufseherin at one time or another in this vegetable kommando, and there is always the possibility of a mistake.

My main point on that affidavit is that it does appear to be, in my submission, a complete invention. The story is very detailed. I think it is about the most detailed affidavit in the book. This incident, which the deponent says happened whilst she was one of the working party detailed to carry vegetables from the store to the kitchen, occurred apparently when Lisiewitz was in charge of the working party. She then relates the incident, and says that Lisiewitz went away and that she was left behind. Well, I think it is quite clear if she had been on Lisiewitz's vegetable kommando, and Lisiewitz had gone away to the kitchen, she would have gone with her.

There are other allegations which accuse Lisiewitz of knocking down and killing two men at once which, of course, is quite a considerable feat even if the men were in a state as some of the internees doubtless were in Delsen; but I submit that that deposition is a complete invention by the deponent.

There is one other point I would make on this matter and that is the date of the deposition which is the 13th June. It accuses two people; Lisiewitz, against whom there was one other affidavit, and Egersdorf, against whom this is the only affidavit. We have heard from Colonel Champion how towards the end they only sent round one or two photographs and asked for allegations against specific people. I think, taking into account the late date of this affidavit, and the fact that it is against two people against whom there is little or nothing else, that it is quite clear that Dora Almaleh, on being asked if she could make an affidavit against two specific people, invented both those stories.

The other affidavit against Lisiewitz is the deposition of Alexandra Swidowa. Again it recognises Lisiewitz by the photograph as being the supervisor in one of the cookhouses. It does not say which cookhouse. Of course Lisiewitz was for some days in cookhouse No.1, in the peeling department, but the point I would make is that I should think at one time or another every aufseherin in Belzen must have been in the cookhouse.

There is not a great deal I can say about this affidavit. The deponent seems to have been one of those witnesses who has almost a fixation about rubber truncheons. Rubber truncheons appear in three out of the four paragraphs in the affidavit. That is all the evidence against Lisiewitz. She does not even know in fact who her accusers are.

We have heard a great many of the prosecution witnesses here who have in fact worked in kitchen No.1. That is the only kitchen in which Lisiewitz has worked, and it is rather remarkable that none of them have recognised her. It does rather suggest that she did not make a great impression on them.

The only other evidence in the case of Lisiewitz (and she was not recognised by a single witness who came here) is contained in Ehlert's statement. You will remember that the learned prosecutor in opening his case, speaking of Ehlert in connection with her statement, said that she, like so many others, considered that the conditions there were a shame and disgrace but, of course, were caused by everybody but herself. I entirely agree with the learned prosecutor that in her affidavit Ehlert was trying to pass the blame anywhere away from herself. But the odd thing about it is that what she says of Lisiewitz is favourable. She says: "I should like to add that Hilde Lisiewitz and Elizabeth Fritzner to the best of my knowledge and believe were always well behaved and treated prisoners really decently". In my submission, in an affidavit made in the circumstances in which Ehlert's was made when she was expecting to be accused herself and was definitely trying to pass the blame, that statement should be given considerable weight. Of course, she herself did admit that she hit people who came and tried to steal from her vegetables when she was going round the kitchen.

It is for the prosecution to prove that this accused, together with the others, has been responsible for the ill-treatment of an Allied National and, in the first place, I would submit that none of those acts amount to ill treatment; and, in the second place, there is, of course, no mention of any nationality in any allegation at all. It is a rule of criminal law that a man is generally only for his own acts and, in my submission, the only way in which this accused can be found guilty is if the prosecution establishes either that they were responsible for the creation of the general conditions at Belzen, or possibly, as they may suggest, that they were party to a plan to ill treat prisoners, and that therefore they were responsible for the acts of other people.

<On the question of general conditions, I wish to adopt generally what has been said by my friend Captain Phillips. In my submission what the prosecution has to prove is some positive act creating these conditions, or they have to prove there was some quite deliberate neglect to do something which could have been done and which would have improved conditions. It is not just a question of carelessness or inefficiency.>

I do not want to say more about Lisowitz, but she was, of course, only in the position of an N.C.O. i/o fatigue parties. She had three or four kommandos, you will remember, who took round the vegetables. She had a peeling kommando in the kitchen, and I think it is quite clear that she could have had no power at all to improve those conditions which, of course, must have existed when she arrived there about the beginning of March.>

In the case of Fiest and Sauer, the situation may be slightly different. Fiest worked in the women's compound No.2, and she was assisted in that compound by Sauer, when Sauer was not in the bath-house. It is clear that they both came into that compound somewhere about the middle of March. They arrived in Belson at the end of February and they spent about a fortnight on various small kommandos, and somewhere about the middle of March they came to do what has been described as police women's duty. I think it is clear that in the middle of March even the conditions in the compound must have been chaotic already.

I do submit to the court that they really had no power as their duties were only those of police women, and that the real person responsible for the compound was the lagerfuhrer whom, we have been told, was a man called Klipp. The only point put to Fiest in the box by the learned prosecutor was that there were a number of sick in the place and there were 300 unsegregated cases of typhus when the British arrived. That, of course, is quite true, but I think it is quite obvious that that probably one of the crying needs was hospital accommodation. It was quite inadequate, and you will remember that we were told by Dr. Bimko that Sauer came very often (the court will remember that Dr. Bimko was in the women's hospital in compound 1 which she told us controlled the hospital in compound 2) to her hospital and told her about the hospital in compound 2 which contained quite a number of surgical cases, and because the conditions in No.2 were worse, she asked Dr. Bimko sometimes to take the patients over into No.1 hospital. You will remember that Volkenrath said something rather similar about Fiest. She said she went also to the doctor who at least took her sick people into the C.R.S.

Of course, that still left the sick in the blocks and, in my submission, it is quite clear that you could not expect an aufseherin to diagnose whether they had typhus or not. We have been told there was a system for getting the typhus cases segregated as soon as the doctor diagnosed the case and had reported to the lageraltester and to Fiest. If the doctor did not diagnose it and Fiest said she did not know, how on earth could she get the cases segregated? In my submission, both Fiest and Sauer were trying to do something in this compound. We have the evidence, as I say, of the prosecution witness Dr. Bimko, but there is not enough evidence to prove carelessness or inefficiency. There must be deliberate neglect of some sort. You cannot find that, in my submission, against either Fiest or Sauer.

The only other way in which I think the prosecution may put their case is to put it that there was a plan to ill treat all these prisoners at large, and that these accused of mine were a party to that plan; and as Allied Nationals were injured as a result, they are responsible. They will base that allegation partly on the individual acts proved and partly on the evidence that has been given with respect to all concentration camps. What has to be proved, of course, is that there was a plan and that

my accused were party to it. There has also been established, in my submission, against Fiest that she took the appel. Well, the fact that that appel was taken under orders is sufficient, in my submission to negative it as evidence of a plan. If the court thought it amounted to ill-treatment, which I submit it did not, it would still be negated by the fact that it was done under orders.

<Against all three there has been a certain amount of evidence of hitting prisoners. Well, in my submission it is perfectly clear that that was done for a purpose; generally because of stealing and sometimes, as Fiest stated, because she lost her temper which is very understandable. It is equally clear that it was entirely unpremeditated.>

ii We have heard a lot about reports. It is true that according to the standing orders and rules of the camp that these cases should have been reported, but it is also true that if every case had been reported there would have been thousands reported a day. In fact, conditions were chaotic, and these people had to do something to keep what order they could. That, in my submission, is the reason why this hitting took place. It was a necessity in order to keep order and not because they had made a plan with anybody else to ill treat all the prisoners.> The evidence we have heard about other concentration camps is not material. These three accused were never at any other concentration camp. Like all the aufseherin at Belsen, or practically all of them, they were conscripts from factories who, after they were conscripted, continued to look after the women in the factory or in their small arbeitslagers.

We have not had much evidence of the conditions in the factories or in these arbeitslagers. I think it is fairly clear that they were quite different from the conditions in the larger camps. I think it was the prosecution witness Litwinska who was asked if these smaller arbeitslagers were like Auschwitz, and she said no, they were quite different.

You will remember, too, that Mr. le Druillennec made a very odd remark in the witness box. He said that there was not the same sadism at Belsen as he had experienced at other concentration camps. In my submission, the reason for that was because at Belsen there were a great number of people who were not really SS people. They were people who had been conscripted from factories - factory women - and people who had been given a ^{three} week's course. I think it is taking a very poor view of human nature indeed to suggest that an ordinary factory woman can be converted into a sadist in three weeks whilst on a course.

The prosecution has put to several witnesses for the accused that every aufseherin who was trained at Langenbilau beat people, and therefore it was some sort of understanding among all the trainees that they did beat prisoners. Well, of course, I think it is quite clear that Langenbilau was in fact a training camp which trained the aufseherin who were going to be used in the Silesian factories, and it is quite clear also that when the Russians advanced the factories were evacuated to Belsen. That is why the aufseherin were trained. Of course, when they got to Belsen (most of them arrived at the end of February or the beginning of March) they found chaotic conditions, and I submit that every one of them found it necessary in order to maintain order to use a certain amount of force.

iii If you accept that view then, of course, it completely negatives the existence of any plan to ill treat prisoners.< In my submission there is no evidence of any such plan or that my accused were privy to, and I ask for an acquittal of all three.>

CAPT. MUNRO: May it please the Court. I represent accused No.43, Johanne Roth, No.44, Anna Hempel, and No.45, Hildegard Hahnel.

I am the last of the British officers to speak on behalf of the German accused, and during the hours of waiting I have found that my friends have dealt with all the general points in regard to the defence of these people. You will already have heard the attacks which my friends have made on the affidavits and the method of taking them, also their value as evidence. You will have heard further the method of photographic identification attacked by my friends. You will have heard the charge-sheet attacked, and, furthermore, you will have heard the idea of concerted action also attacked, and the responsibility of those accused for committing war crimes in general. I will, therefore, very quickly move from the general to the particular and deal with the evidence against my accused. Before I do that, however, I should like to point out to the court one or two things about my accused, and about what I consider to be their responsibility for what happened at Belsen.

First of all, who are the people that I represent? What is their stature - not International stature - but stature in Belsen? Roth herself is a prisoner of the Gestapo. She has been a prisoner of the Gestapo since 1941 and, as I will say later on, she only became a functionary at Belsen in the last days of March.

Hempel was an aufseherin in cookhouse No.2, and Hahnel was not in charge but a sort of second in command, although it has not been proved by me nor disputed by the prosecution, in the pooling section of cookhouse No.1.

I want to suggest to the court this. My learned friend, Major Winwood, has said that at Auschwitz thousands of people were killed, and at Belsen thousands of people died. I need not go into the details as to how these people died, but you have heard the terrible story of Belsen, the disease, lack of food, and lack of water. I will merely submit at this stage that my accused, small as they were, could have played no part at all in alleviating these conditions. I submit that my accused were part of the few people at Belsen who stayed in the camp all the time. Roth remained in her block all the time. Hempel remained in her cookhouse and worked from fourteen to sixteen hours a day until she herself went sick with typhus. Hahnel during the few days she was at Belsen did the same. These people took the same chance of dying as any internee did. In a camp where one's life or one's death depended upon a piece of bread or an extra cup of soup, I submit to the court these three accused were the people who actually tried to hand that cup of soup to the internees, and were the people who made some positive effort to correct these chaotic conditions.

My second point is a comparison between the conditions at Belsen and the responsibility therefor with several sort of common factors with our life in Britain. I might compare the status of my people with an ordinary military establishment in the British army. I would compare the camp commandant at Belsen to a battalion of commander. I would compare Hempel to a corporal, and I would compare Roth to a private soldier. Furthermore, in a British prison I would compare the camp commandant at Belsen to the chief of the British prison. I would compare Hempel to a warden, and I would compare Roth to a prisoner. It is my submission that under no circumstances can all those people be charged upon the same charge-sheet and be comparably guilty of either a war crime or any crime.

I attack people here, pointing my finger to the South of Germany. I attack the people who were immediately in charge at Belsen. I submit that the smaller people, the people I represent, are in no way responsible for the general conditions.

The next general point I would bring to your notice is the question of beating. I have mentioned that my accused spent the whole of their days in No. 1 camp at Belsen. They were surrounded with what might be compared with four divisions of British infantry. Those people were hungry, and the ones who were not hungry were very sick. I submit on their behalf that their beatings were solely corrective beatings. They were not sadistic beatings. I suggest that every witness that has come here to this court has grossly exaggerated the nature of these beatings. I submit that the people who did stay in No. 1 camp - and these are very much my people - had to administer corrective beatings in order, to quote Captain Boyd, to gain some degree of control over these people who undoubtedly were maddened by hunger. When I get on to the charges against them in detail I can mention this point again.

My first accused is Johanne Roth, number 43. Johanne Roth in January 1941 was thrown into prison, the reason being, according to her, because she was living with a Polish DP. You have heard the story told by Johanne Roth herself in court, of the weary journeys she has had from concentration camp to concentration camp in Germany as a prisoner. From Giessen she went to Darmstadt; from Darmstadt to Ravensbruck; and from there to Auschwitz, to Berkenau, to Bublin, and, finally, to Belsen. She arrived in Belsen on the 27th January of this year, and until that time I would impress upon the court she was as much a prisoner of the Gestapo as any of the prosecution witnesses.

She has told you that in March she was transferred to block 199. That block was an ordinary block at Belsen. It was a moderately sized block into which you could possibly put a company of infantry. She has told us that in that block there were between 800 and 1,000 people, many of whom were sick. The conditions in that block were completely chaotic. I submit to the court that when Kramer saw these transports arriving at Belsen - people who were sick and starving, people who carried typhus, people who were lousy and filthy - he had to create a greater staff, and people like Roth were made functionaries. She has told you how thirteen German women were incorporated and three were made functionaries. She herself was made a stubendienst and the others had different jobs. In a block you had a blockaltester, who was in charge of the block; you had an arbeitsdienst who was in charge of collecting together the working parties; and you had capos who took these working parties out of the camp. The stubendienst was the person who stayed behind and looked after the block her duties including feeding. She was in charge of feeding all the internees of her block.

I should like to quote what Roth said herself. I said to her: "Did you want this job?" and she said "No". I then said: "Why?" and she replied: "It was a thankless task; a hard thankless task". That, sir, is the very kernel of my defence of Roth - her own words. This person who for five years had been a prisoner of the Gestapo then found herself as the person in charge of 800 internees in a block filled with starving and filthy people. She was in charge of feeding these people. She had no more idea or authority, no more control than the merest child. She was expected to control these people in the way the SS wanted her to. I submit that Roth was not controlled in any sort of way. She was not supervised by the SS. She was given this task and she had to do it the best way she could. I submit that these functionaries were literally the only people who stayed at their job when typhus was rife in Belsen. Can it be seriously held that Roth is guilty of a war crime, can be party to a conspiracy of a combination of persons? I submit very strongly that it is quite impossible.

The first witness against Roth, and the only live witness to make an allegation against her, was Helene Klein, whose evidence appears in book 12 of the transcript. I believe my learned friend and namesake quoted my cross-examination of Helene Klein when he made his closing address, and he made a remark about her credibility.

The first thing to which I would draw your attention is page 11. Klein said that Roth was a notorious night guard and Roth's reply to that was: "I never was a night guard". When the learned prosecutor examined Klein he said: "In which block did you live?". Klein said she lived in block 199. When I cross-examined Klein she said that she did not sleep in block 199, but with a friend in the clothing store. Now that is the first discrepancy in Klein's evidence. I suggest it is a vital one, because if she lived in another block she would not know who was the night guard. She certainly would not know about a notorious night guard.

Furthermore, in her affidavit about Roth, Luba Rorman said that Roth was a stubenaltoster of block 199. I am afraid I do not know what that means but I imagine it is something like stubendionst.

Sophia Resonweig said that Roth was the assistant block leader in block 199. Klein goes on to say that Roth beat people with a broom or a stick or anything that was available. Roth categorically denies this. In particular Klein says that Roth beat the sick woman Ide Friedman who died the next day. She said that Ide Friedman was beaten because she wanted to leave block 199 and go to the lavatory during the night. In her cross-examination Klein stated with the greatest certainty twice that Ide Friedman had died. Listen to her cross-examination.

She says first that the beating took place in the block in the night because Friedman wanted to go to the lavatory. Then she says it was three o'clock in the morning when they assembled for kommandos. Then again she continues that Friedman was beaten up inside the block. Then she states it was on the threshold. She further states that she did not see Friedman die at all, but she was only told about it the next day.

What is this evidence worth? In examination by the learned prosecutor she accused Roth quite definitely of killing Ide Friedman. In cross-examination all her facts changed. I suggest to you, as I suggested at the time to Klein, that this is nothing more or less than an attempt to pin a murder on Roth and is therefore quite worthless.

That is not all. When Ehrlort came into the box I asked her some questions about block 199 and in particular about Ide Friedman whom she knew. I asked her: "When did you last see Ide Friedman?" and she replied: "When we returned from Neuengamme to Belsen. I remember that Friedman read the cards for me. She predicted the future out of the cards for me". I then asked her when, and she said: "On the Saturday before the arrival of the British troops". Then I inquired of her when the British troops arrived and she said: "On Sunday afternoon". Furthermore, not content with this, I cross-examined Ilse Lothe who said she regularly went to block 199 and knew Ide Friedman as well. When I asked her when she last saw Ide Friedman alive she said ten days after the arrival of the British troops. She said: "I went to the hospital as a nurse and Ide Friedman was taken to the hospital". I asked her what was the matter with Ide Friedman, and she said: "I thought she had typhus".

Now is the court going to believe that Ide Friedman was killed by Roth or not? I submit that not only have I cast considerable doubt on the allegations which the learned prosecutor must make, but I submit that I have completely destroyed the case that Klein has made out against Roth.

The next allegation is by Luba Rorman, exhibit 72, transcript 16 page 26. There is nothing much I have to say about this affidavit. I put it to Roth and she categorically denied it, but I would just remind the court of the facts.

Roman accused Roth of beating a Polish girl named Hoffman whilst she was on food parade and wanted to go to the lavatory. She said the girl fell down unconscious and was taken to bed. She then said she protested to Roth, and Roth beat her as well. She goes on to say: "My friend Hoffman was then taken to bed and I heard later that she had died". There is no confirmation of this affidavit as to the death, and that is all I will say about it.

The next allegation is by Sophia Rosenweig. Again that has been categorically denied by Roth, but I would draw the court's attention to what she says. "There were about 800 women in block 199 and it was the duty of Roth to get the women out of bed to attend appel. On one occasion I was sick with typhus and I felt too ill to get up for appel. When Roth came round to me to get me out of bed I told her I felt very ill but Roth insisted that I get up and commenced to beat me with a wooden lath taken from a bed. I had marks on my shoulders for two weeks after the beating. I admit that many of the internees used to feign sickness in order to avoid getting up for roll call but in my case it should have been obvious to Roth that I was very ill. It is my opinion, too, that Roth tried to please the SS too much to the detriment of the internees". As I said, Roth has categorically denied this beating altogether.

Is not it obvious to the court that this woman, ^a farm girl, a prisoner for five years, in charge of a block of 800 people had no idea of how to deal with these people at all? I am convinced in my own mind that Roth has intentionally beaten people, ^{but} not with the savagery this affidavit suggests. I submit to the court that in these very difficult conditions Roth did all she could and she was in the camp all the time. I asked Helene Klein: "Who fed you?" and she replied: "Roth", and that is just what Roth was doing. She had to get people up for appel. She had to feed people. These jobs she carried out. I submit to the court she did nothing more and nothing less than her duty.

From Roth I now move on to Anna Hempel. Hempel is another of the people about whom I have been speaking - the small people at Belsen. She is a mature woman of 45 years of age, married, with a son. She had a job in the factory in Silesia, like so many of the women in the back row in this court, and in May she was sent to Ravensbruck to learn how to deal with internees. It is the same story as told to you by Captain Phillips, and I will not repeat it.

She arrived in Belsen the same time as these other people, the 17th February of this year, and she worked in cookhouse No. 2. Cookhouse No. 2, if I may put it this way, is one of those sort of inanimate personalities in this trial. It is as well known as the bath-house at Dora, and has been quoted as much. In this cookhouse Hempel says she worked fourteen to sixteen hours a day until April 8th, when she was taken to hospital with typhus. She says that she cooked for 17,000 people - a division and a half of infantry. She had under her 43 women internees and 18 men. This cookhouse, if you will look at the plan, is virtually in the centre of Belsen camp. It is on the side of that main road which runs right through the camp, the right hand side. In this court room where the prosecution produced so many former prisoners, I think it is quite extraordinary that only two identified Hempel. Those two made allegations against her.

I asked Hempel in examination about the food situation at Belsen, and she said food was scarce. There was not enough; a fact of which we are all well aware. I asked her if she did anything about it and she said yes. Charlotte Klein said that Hempel went to her for more bread, and when she could she gave Hempel more bread. I am going to submit that

Hempel was one of the people in Belson who did positive things for the internees. We have heard about cookhouse No. 2 - all the wrong things that have happened in this cookhouse. Nobody yet has said in cookhouse No. 2 food was produced for the internees right up until the end. Hempel was the only aufseherin in the cooking portion of cookhouse No. 2. I should like the court to imagine the position of one aufseherin with 43 internee women and 18 men under her cooking for 17,000 people everyday for fourteen to sixteen hours a day. I want the court to imagine a mature woman's reactions to the death and suffering around her. Can the court imagine her agitation and anxiety when the food was not being cooked properly and quickly enough? These are the points I should like the court to bear in mind.

I will go straight on now to the evidence against Hempel, and I shall first of all deal with the evidence of Klein. The evidence against Hempel (I may say here that it is practically all the same) deals with stealing and Hempel beating because of stealing. I think Klein says the same thing as Diamant and Luba Triszinska, that Hempel beat people because food was being stolen. Klein says (and the court has heard what people in this courtroom think of the evidence of Klein) "She ill-treated people from the personnel in the cookhouse in a terrible way. Apart from that, if anybody out of the prisoners would approach the cookhouse in order to get hold of a piece of turnip or anything else she would beat them terribly. I observed her and I noticed that she kept in her office the special riding whip, and she always used this riding whip for this purpose". That is the only allegation which says Hempel had a riding whip. Hempel herself said she had not a riding whip, and I ask you to believe Hempel and disbelieve Klein.

Lydia Sunschein says that Hempel beat people because she caught them with remnants of turnips in their hands. I will not elaborate on that. It is the same story - someone stole from the cookhouse, Hempel caught them, boxed their ears, and sent them away.

The next one, Gertrud Diamant is contained in transcript 15 page 15. It is the same story again. "I have seen Hempel beating prisoners with a rubber stick for stealing or attempting to steal from the kitchen. On one occasion I saw her beat a very sick man and he collapsed in a heap on the ground".

As regards the affidavit of Luba Triszinska, you have heard Captain Phillips speak on the affidavits in general made by Luba Triszinska. You heard what he said to the discredit of this witness. She says that Hempel caught a man stealing turnips and she hit him and then called the Rottenfuhrer and he slapped him also, and the man then collapsed on the ground unconscious. What does Hempel say about that? She says: "That is true. I caught this man stealing turnips and I hit him with a stick over his back, but it is not true that I called for help from another Rottenfuhrer, and it is not true that the man collapsed either. What happened was the sturman saw it, came out from the kitchen, and slapped his face and the man ran away".

I will not deal with these affidavits any further or the evidence against Hempel because, as I say, it all amounts to the same thing. If the court wishes me to go into them further, of course, I will; but I submit, and Hempel has said, "I did beat people. I beat them because they were stealing", and I submit if these people were stealing food which was precious to cookhouse No. 2, food which was invaluable for the feeding of these 17,000 people, that everything she did has been exaggerated by the evidence of witnesses in these affidavits by Sunschein and Klein.

I would ask the court to remember what Hempel did. I would ask the court to remember the work she did and the hours she spent in the cookhouse, and the fact that she herself collapsed on April 8th with typhus.

My next accused is Hildegard Hahnel. There is one affidavit against her which is on page 146 of the bundle. Hahnel is yet another of these factory girls who was given a uniform and told to control internees. She is charged on the same charge-sheet as the camp commandant of Belsen. She is a person who has not been recognised by a single prosecution witness who has come before this court.

THE PRESIDENT: I think Litwinska did.

THE JUDGE ADVOCATE: She said she worked in No. 1 kitchen.

CAPT. MUNRO: Yes, I am sorry; that is quite right. In the last few days she did. She is the person who makes one allegation against her on page 146, and I suggest to the court that in no way can this person be guilty of being concerned in any way. Kramer, Volkenrath, and the people at the top at Belsen, much less can Hahnel, be concerned with any conspiracy outside the theatre of Belsen. Colonel Smith called the people in this dock obscure people. I would suggest that Hahnel is the most obscure of these people. There is only one affidavit and I propose to read it to the court as it stands. It is an affidavit by Tolia Stompler, female, of Poland, and reads: "I am 20 years of age and was arrested on the 29th May 1943 in Drohobioz because I am a Jewess - "I think I might leave the first paragraph and go onto the second - "I identify No. 4 on photograph 37 as an SS woman who was at Belsen. I have now been told that her name is Hildegard Hahnel. During February 1945, whilst at Belsen, I was in the bath-house together with about 100 girls. Hahnel at that time was in charge of the bath-house. Apparently the girls did not dress quickly enough for her and with a whip she was carrying she beat some of the girls whilst they were naked. The beatings were very severe and I saw that she had drawn blood in many cases".

When I was putting my case before the court, I told the court that I had been instructed by Hahnel that she would not give evidence before the court for reasons which I did not understand at the time. I merely said that everything had been said for Hahnel that she could say herself. She could add no more, and if the court could not see their way to acquit her, the evidence standing as it did, nothing she could say could make any difference. I still think that that was right and proper.

I now propose to deal with the evidence which has been brought forward on her behalf. Firstly during February 1945 - it says in this allegation "February 1945", and I think the court must be convinced at this time that Hahnel was not in Belsen in February or in March or in January. She did not arrive in Belsen until April. Volkenrath, when I asked her, said that she arrived sometime in April. I said could it be the 4th, 5th, or 6th April, and she said it was possible. At any rate, Volkenrath, who was the head SS woman in Belsen, said she arrived in April.

I asked Pichin who was in charge of cookhouse No. 1 if Hahnel worked with him, and he said: "Yes, during the last week before the arrival of the British".

I asked Ilse Forster and she said that Hahnel worked exclusively in the cookhouse No. 1 during the time she was in Belsen which was in April.

✓ Sophia Litwinska said that Hahnel was in cookhouse No. 1 during the last few days, and that meant before the arrival of the British there. I think the Court must be convinced that this woman was not in Belsen in February. Even allowing for a discrepancy by this young girl who made this affidavit, Tolla Stempler - we may give her a month and a half - even so other witnesses say that Hahnel was never in charge of the bath. Pichen, Forster, Volkenrath, they all say the same thing: Hahnel was never in charge of the bath house. Sauer, who was in charge of the bath house, says the same thing.

Further than that, I have asked witnesses if Hahnel ever took a bath parade in Belsen. I asked Volkenrath: "Between the 4th April and the time the British arrived, did Hahnel take a bath parade in Belsen; was it possible to take a bath parade in Belsen?", and Volkenrath said No, and she explained that there was no coal.

Sauer says the same. Pichen said she worked exclusively in his kitchen and not in the bath house. Forster says the same. Now everything about this affidavit is completely wrong - everything.

Hahnel, I submit to the Court, has the strongest case of anybody in this Court room. The evidence for her is over-whelming in regard to this affidavit. Can she legitimately be convicted merely because, by some accident, she finds herself at Belsen when the British arrive? Can she be said to be part of a bigger conspiracy or combination, and can she finally be said to have committed any war crime at all?

Hahnel has been in prison for six months. She has dragged those bodies to the grave like the other S.S. people. With the greatest sincerity in the world I ask for her complete acquittal.

That concludes my case for the whole three accused, and before I finish I would like to remind you of what I said at the start, that a lot of people died at Belsen and a lot of people could have done something about it, but not these people. They did all they could in their practical way. Roth handed the food to the prisoners, and Hampel cooked the food.

I submit to the Court that they have committed no war crime; they did all they could, and there was nothing more they could do.

LIEUT. JEDRZEJOWICZ: I represent six accused, Starostka, No. 40; Polanski, No. 47; Kopper, No. 46; Ostrowski, No. 31; Burgraf, No. 20, and Aurdzieg, No. 32.

As I am the twelfth Defending Officer to address the Court I do not propose to deal again with what has already been said on different subjects on general principals like affidavits and so on. I accept as my own what has been said before this Court by my learned friends.

There is only one thing which I must point out which, in my view does not concern my clients, and that is the conflict between national law and International law on which Colonel Smith has addressed the Court.

1 | All my clients are Poles. They are alleged to have committed crimes against Poles and other nationals, and in this respect, in my submission, there is no case of a war crime whatsoever the way Colonel Smith described it. On the other hand there are two other points which are material here, more material in my case than in the case of the other accused. That is the problem of collective responsibility and of superior orders. I propose to deal with those two points at a later stage of my address, and I will deal now with each case of my accused separately.

I take first the accused Starostka. The evidence against Starostka produced by the Prosecution is partly oral and partly documentary. If I may take the oral first, the Court will remember that there were 13 live

witnesses who have been introduced by the Prosecution, all of whom have recognised the accused Starostka in the dock. Out of those thirteen live witnesses, twelve are women and all of them have been at Auschwitz No. 2, called Berkenau, where the accused was lageraltester. They all have been there for a period of not less than one year, and all thirteen have recognised the accused as being the lageraltester in Berkenau.

Although they were all allowed to sort of indicate in a few words what they knew about the accused, only four have brought against Starostka an allegation of some sort, and those four witnesses are Dora Szafran, Ilona Stein, Glinowieski and Anita Lasker.

Dora Szafran has said this: "No 40 was lageraltester at Auschwitz and Belsen, who herself carried out selections". Ilona Stein said: "I cannot talk so much about the beatings at Auschwitz because she did it so frequently that it is hardly worth while to mention it. She was just as bad as one of the worst supervisors. I myself got a very severe thrashing from her when we went for a bath parade. My nose was bleeding very hard. I must add that even sick people with 40 degrees temperature had to come to those appels, or if they could not they were sent away to the crematorium". Glinowieski said: "She also beat them" - that is the prisoners - "on the knees and whenever they stopped on parades improperly she beat them".

Finally, Anita Lasker said: "She was a notorious collaborator with the S.S. and we have been much more frightened of her many times than the S.S. people". That leaves us with nine Prosecution witnesses who, although they could do so - because they must have known if it was so - have never said anything against Starostka. They have not said that Starostka was a bad lageraltester.

Now the written evidence is contained in the three statements by Szparago, Szymkowiak and Synowska, which were all marked Exhibit "104". Apart from being oral and documentary, the evidence against her may be classified as general allegations and specific allegations. The general allegations are both oral and documentary, and I propose to read to the Court the way the three deponents have brought forward these general allegations.

A They all describe Starostka as being a sort of monstrous murderer in Auschwitz camp. Szparago says she was the right hand of the S.S. and that she was above criticism. She killed and tortured 1,000 women; she killed thousands of Polish women; she beat and tortured women; she had a worse reputation than S.S. men; she denounced women, and in August, 1943, she became a lageraltester as a reward for extermination; she was worse than the S.S. men.

Synowska says that Starostka was the only master in the camp; she was a beast in a human body; she was perfect in causing slow death; she exterminated ill and old people; she ill-treated the little children; she caused the death of thousands of Polish women.

Szymkowiak again says: She was the terror of the camp; all run away if they have seen the devil; she was a beast.

There are only two general allegations against her brought forward by the live witnesses, and Stein said: "So much beating that I cannot tell", and Lasker said: "We were more frightened of her many times than of the S.S. people; she was just like S.S.".

Now the Court will undoubtedly notice the amount of unusual strong expressions used in those statements. The Court will realise also how often they are contradicted, even in the same statement. For instance Synowska says: "She was the only master in the camp", and then

she says she was the right hand of the S.S. Another one says: "She killed and tortured 1,000 women", and then later on she says: "She killed thousands of women".

Some other contradictory statements are: "We were many times more afraid of her than of the S.S.; she was just like an S.S.; she was worse than the S.S.". In my submission, somebody who accuses a person of killing 1,000 or more, thousands of people, should be able to name at least one specific instance and give a name, a date and description of how it happened. Out of sixteen witnesses, the deponents included, only Szparago and Zymowski allege a mass murder, the mass murder of killing a thousand or more Polish women.

The Court, no doubt, will realise that if the accused was indeed a killer responsible for the mass murder, if she was indeed selecting for the gas chamber over a period of about two years, if she was really a beast in a human body, the only master in the camp, those thirteen Prosecution witnesses would all have said the same. They would all have used more or less the same expressions; they would bring forward more or less the same instances.

As all have identified Starostka and all have been under her command, as I say, for not less than one year in the same compound they would all bring forward the same instances. Many say they have known her as a lageraltester in Belsen too. But there is no such thing.

The verbal allegations, as I have already said, are nothing compared with what are the written ones, and all three statements are unsworn as the Court has probably noticed, and in my submission that is the reason why they are so conceived. They bear no certificate by the interpreter as to whether the deponent agreed with the final meaning and the final wording of his deposition.

Then again, something which must bother the Court is this. Szparago, in her statement, said she recognised Starostka at a dance at Glinde camp on the 28th June, 1945, but she made her statement against her only on the 24th July, 1945. Now I ask you, why did she need a month's time to inform some authority of the whereabouts and of the previous actions of Starostka if she was as she described her, a monstrous criminal?

Now I will deal with the selection for the gas chambers. Szparago, in her statement, said: "As blockaltester of block 26 she" - that is Starostka - "has chosen candidates for the crematorium. In Autumn 1943, in view of her special merits in exterminating she got the rank of lageraltester; she has killed thousands of Polish women" - presumably in the gas chamber.

Synowska, in her statement, stated that she exterminated ill and old people because she did not like this sort of people; ill and old people were sent to the crematorium; she caused the deaths of thousands of Poles.

A third witness who mentions the selections is Dora Szafran, who said: "As lageraltester she carried out selections herself". We have here three witnesses, one of whom alleged selections being done by Starostka as a blockaltester of block 26, and the other two alleged her having done selections as lageraltester. In my submission, at this stage of the trial the Court must realise how unlikely, or even impossible, it was for a blockaltester or a lageraltester to make her own selections for the gas chamber. Obviously Starostka as a blockaltester and later on as a lageraltester, was present during selections at Auschwitz No. 2. She had to be present; she could not avoid these selections. The Court has heard what Dr. Klein has said: "The selecting was done exclusively by doctors".

The witness Rosenzweig said: "Stania took down the numbers of those who were later sent to block 25", and Dr. Birko, when she gave her

evidence in the witness box said about Stania: "I do not think she was in a position to choose victims for the crematorium". Starostka herself has explained in detail what her duties were and what was her part in those selections.

In my submission it is perfectly obvious that if Starostka was allowed to carry out selections for the gas chamber on her own while she was a blockaltester or while she was a lageraltester, the other blockaltesters and the other lageraltesters at Berkenu would have had the same rights.

Now if the blockaltesters and lageraltesters were doing the selections the way they liked, at the time they thought most suitable for it, why are the German authorities of the camp bothered to make their own selections? Why should they force a doctor to attend? Why did they try to keep the whole thing secret? Why should Dr. Klein then confess he was the one who selected, and the doctors were the only ones to select? Why have none of the Prosecution witnesses, or the deponents, ever mentioned or described the specific selection made by Starostka as a blockaltester or Starostka as a lageraltester, or by any other blockaltester or lageraltester of any nationality? Why do those who accused Starostka of selecting confine it to a mere mention?

For example, Ilona Stein, in cross-examination, said: "It is true that if a prisoner went to work it was all right, but if she stayed in the camp, reported sick, or went to the hospital, then the probable issue was the gas chamber". She goes on and says: "I would have always tried to find a certain job for which this percentage of the sick prisoners could have been employed officially, and through this I would have tried to avoid the great number being sent to the gas chambers". That is the explanation which she gave while I was cross-examining her and trying to get specific instances when Starostka made a selection.

If she says herself that by doing this she would save people from being sent to the crematorium, obviously she means that she would not herself be making the selection, because it is impossible. Therefore, in my submission, she completely destroys her own allegation.

Dora Szafran says: "The authority to send people to the gas chamber was granted to everybody in the camp who had an amulet on their arm", which would mean, as we know, that even Stubendienst and camp policemen were who were wearing an amulet were allowed to make a selection, which is obviously ridiculous.

Now I will deal with the part Starostka has taken in the selections which were done by the camp staff and by a doctor. Rosenzwayg, as I have said, stated that she was taking down the numbers of those who were later sent to block 25. The accused herself took those down. It was not her duty to write the numbers down each time there was a selection because it was the duty of the clerk. She got permission to write down those numbers and she told you why she wanted to do that, and that was because she wanted to get more time before handing over this piece of paper to the Rapportfuehrerin. She was trying to give time to friends and relatives of those victims to come and ask her to miss out a number here and there.

Dr. Binko has said in her testimony that she has been doing exactly the same thing in hospital. She has said "All of the 359 patients and I am quite sure about the number because I had to prepare the nominal roll, were simply loaded on to trucks and led to the gas chamber". Nobody, I think, ever thought that Binko was responsible for the guilty part in a selection for the gas chamber.

The witnesses I have called on behalf of the accused have all mentioned here and there an example of what really was the part Starostka has taken in the selections, that because she took part in those selections she

| was able to do quite a lot of good for the prisoners. >

✓
A | Wojciechowska, transcript 40, at page 5, told us that at the time it was a general selection parade in the camp she was sent to block 25. < Starostka came to block 25 and took 20 girls out and went with them to the stores and issued them with shoes and they were sent to work. >

X
✓ AB | In cross-examination the same witness said that it was a punishment for unning away from the working party or the working parade. It may have given the impression to the Court that it was merely a punishment and it would be finished once they went into block 25 from which they would be sort of rescued again or allowed to return to their old blocks, but Dr. Binko says in her statement about another girl who as a punishment was sent to block 25 and was sent to the gas chamber. So it proves that anybody who was sent to block 25 was finally sent to the crematorium.

✓
B | The witness Janicka says: "The parade was held at an unusual time and Stania told us to leave the block and try to make ourselves very well. She would not say if it was a selection for the gas chamber. Nobody was taken out of our block but < from other blocks many people were chosen and later we found out that the parade was for the gas chamber". >

C | < Konsta says she never carried out selections on her own initiative; she was not entitled to do so as she was also a prisoner herself. On the contrary, when a selection was held she was able to save some people chosen during those selections; she did her best to do it. >

D | < Nowogrodzka mentioned the same incident which was mentioned before: "I remember when 20 Polish women were chosen for the gas chamber. They were sent to block 25 and Starostka went there and brought those women back". >

So much for the gas chambers. If the Court consider carefully what has been alleged and how it has been alleged, and compare it with what the accused has said about her part in those selections, and if the Court add to that the specific instances put forward by the Defence witnesses, they will undoubtedly acquire the right knowledge of the truth.

I myself firmly believe that the Court will attach more weight to the testimony of the Defence witnesses and the accused herself than to an allegation like that of Synowska who simply says: "She exterminated ill and old people because she did not like that sort of people.

That closes the part of my address concerning the gas chambers.

(At 1255 hours the Court adjourns).

(At 1430 hours the Court reassembles).

(The accused are again brought before the Court).

LT. JEDRZEJOWICZ: The next group of allegations I call general illtreatment and first I will take the alleged illtreatment at the time the accused was a block altester. The Court will find those allegations in the statements of Szparago and Szymkowiak. They allege beatings when they were both in Block 26 and the accused was the block altester of this block.

The accused, on the other hand, has tried to explain to the Court why, in her opinion, it was necessary to have recourse to beating. She has never denied it and she has asked you to understand what conditions were prevailing in this block, how difficult it was for her and, at the same time, how important it was to the rest of the inhabitants of this block to have the criminal types, the green triangles as she has said, under control. Unfortunately the Court were unable to check whether or not Szparago and Szymkowiak were wearing these green triangles themselves.

Again I will refer the Court to the statement of Litwinska, the way Litwinska explains why in her view beating was of necessity in the block from the point of view of the block altester. I asked the witness Litwinska: "If you saw a fellow prisoner at the food distribution try to get food for the second time and by doing so deprive yourself from your share which you have not got yet, and if this prisoners was hit by a block altester, would you blame the block altester or would you be satisfied that justice has been done and you were under protection?" She answered this question by saying: "If a block altester hits the prisoner badly then I prefer to go without food myself". That is a very poor explanation because if she went day after day without food she would be very soon starved herself.

The next witness, Synowska, has known the accused first as her own block altester in Block 7. Her allegation is that Starostka beat prisoners until they lost their senses and was causing their death. I have produced several witnesses who have been in the same block, Block 7, at the same time as Synowska was and the accused was block altester of the block. I refer the Court in this respect to what the witness Janicka says, and then Komsta. In transcript volume 40 page 11 Janicka says: "When I was sent to block No. 7 I was told it is the worst block in the camp because of a very bad block altester, but during my stay there I came to the conclusion that it was entirely groundless, because she was very good and she was very energetic. She tried very hard to maintain order in the block and to secure fair distribution of food". The next witness was Komsta who gave evidence to the same effect. They were both asked by the prosecution why they did use more or less the same expressions, that when they came to Block 7 they were first of all afraid of the block altester and then they changed their minds. Well, I think the explanation is a very simple one, which they have given, that it is only corroboration of their own statements and it is quite possible that when the block altester, Starostka, was transferred from Block 26 into Block 7 she had a very bad reputation and when she came to Block 7 the internees who were in Block 7 and who joined the block later on might have been afraid of her, but when in Block 7, as it appears, there was no reason whatsoever to beat the prisoners and she did not beat them. That is why these witnesses, who have been in Court and have had their reliability checked during cross-examination, say that really there was no reason for beating and there was no beating.

The beating the accused admits to having administered, does it really amount to illtreatment in the criminal sense of the word? Did she beat prisoners to satisfy a kind of cruel and brutal instinct of hers, or was it only a reasonable beating as a means of control? That is what the Court has to decide. On the one hand there is the evidence given by the prosecution witnesses who support the allegation that this beating was unjustified and brutal and, on the other hand, there is ample evidence in what the defence witnesses have said that it took place only when justified in the interests of the majority of the internees.

What was the beating with? None of the prosecution witnesses have ever mentioned Starostka beating prisoners with a stick or a rubber truncheon or a whip. The defence witnesses, on the other hand, have said, and the accused herself has said, that when she had to beat she was only using her hands.

The allegation by Glinowieski that while he was in the women's compound he saw the accused beating prisoners when they were not standing properly on parades has been answered by the accused, and answered very reasonably. If there was a parade in the women's compound there must have been a similar parade in the men's compound and the witness Glinowieski could never have seen the parade. As he said, it was the morning parade; it was not a gas chamber selection or a parade for working parties.

The next alleged illtreatment is the allegation by Szparago that she has taken part with the German camp authorities in torturing internees to get out of them information about the secret relief organisation. If she did so at any time between January, 1943 (that is the date when Starostka arrived) and January, 1945 (that is about the month when the accused left Auschwitz) some of the other witnesses should have known her very well during this period of time and would have corroborated the statement because any torturing like this would have soon been known throughout the camp, throughout the whole women's compound; it would have affected people living in different blocks and working in different cookhouses, in different kommandos performing different duties. Szparago herself has said it happened many times and all women prisoners can prove it. I ask the Court: where are those witnesses? Where are these examples?

In her statement Synowska has said that the accused used to push girls against the electrified wire and kill them in this way. Against that I refer the Court to what the accused has said herself and also to what the prosecution witnesses, Sompolinski and Litwinska, have said in this respect. Sompolinski, in transcript volume 13 page 17, has said that the wire was never electrified during the daytime for the simple reason that the prisoners were away from the camp, they were all working outside, and it was only during the night that the wire surrounding the camp or compound was electrified. Litwinska, in transcript volume 7 page 13, has said that there was a rather deep ditch inside the wire and it was not easy to get across. To all this the accused has added that not only it would have been difficult to get somebody across the ditch but herself and the prisoners would probably be shot by the guards who would not know what was going on.

Another example of illtreatment reported by the witness Synowska is the incident of a woman called Grakarek who was, apparently, forced by the accused to keep her head in a bucket of water in the month of October because the accused did not like the kind of hairdress the victim was wearing. During cross-examination the witness Litwinska said that all women, irrespective of their nationality and religion, had their hair clipped at Auschwitz. The accused had given another explanation of this; she has said this was not impossible because there may have been another reason, that she was responsible for delousing and she might have washed the girl's head in a bucket of water with a solution to kill the lice.

The allegations of denouncing to the German authorities any offence committed by a prisoner have also been rebutted by the accused and her witnesses. The Court has, on the one hand, the testimony of Anita Lasker (transcript volume 13 page 21) saying that the accused did report women prisoners to the Germans for speaking with men and things like that and, on the other hand, the Court has the evidence of the witness Wejciechowska who has said that she was caught by the accused reading a letter for which she would have been punished if caught by the camp staff and Starostka advised and cautioned the witness to destroy this letter and to run away. I leave it to the Court to judge for themselves whether in this case there is reasonable ground to believe that she did denounce the prisoners or not.

The accused has told the Court the story of her life in the concentration camp and of the good she succeeded in doing. She has explained why she wanted to be come a lager altester. The Court must realise that it was not possible for her at the time to let anyone know that she did obtain from the Germans an improvement of conditions in the camp or succeeded in saving people from the gas chamber, that it was her and nobody else who did it, and she was the prime mover in all this. She does not know the names or numbers of those who experienced the benefit of her actions and the inmates of Berkenu camp, on the other hand, did not know or did not realise who was responsible for it and that is why it is so difficult for the defence to produce witnesses adequate in number and quantity. The Court has heard some of them and I now refer to them.

✓ The witness Wojciechowska has spoken about the rescuing of 20 girls from Block 25 and has told you about the incident in which she was involved with her letter. ✓ The witness Janicka has spoken about the warning the accused gave before a selection for the gas chamber and the reason why no girls in this block were selected. A The witness Nowogrodzka has told the Court how the accused obtained from the camp staff permission for the girls to wear their winter clothes longer in the spring. She was punished for helping prisoners. One incident related by herself was when she was beaten by the kommandofuhrer. There was another incident when Janicka saw her in the camp with a swollen and beaten up face, and then again she was punished by the German camp staff for letting people communicate between two compounds on a Sunday. Out of the cross-examination of the witness Nowogrodzka it appears that Starostka as lager altester was treating better the Christian Poles than the Jewish Poles. The Court may feel, or the prosecution may desire to put it to them, that Starostka was a member of the Polish gang acting in Berkenau to the benefit of the Poles only and to the detriment of the Jews.

I wish to forewarn the Court against that impression on the following ground. Of the 13 prosecution witnesses who have identified Starostka only three who made the statement are Poles or Roman Catholic, as they say in the first paragraph of their depositions, but, as I have already pointed out in my opening address, of the live witnesses the Jews brought forward by far weaker allegations against her than the Polish witnesses. In my submission there is no case of acting on her part to the detriment of the Jews, though it is quite natural and quite just to expect her to be more concerned with the Poles first and then with the other nationalities. The Court has heard all the prosecution witnesses asked by the learned prosecutor or by a defending officer during cross-examination what was their nationality. They never said they were Polish Jews or Polish nationals of the Jewish religion; they always said they were Jews from Poland and, therefore, in my submission, it might have given the impression that the accused treated the Poles better than the Jews or other nationalities. If she succeeded in obtaining a general favour like the permission of wearing winter clothes for a long time in the spring that was something from which not only the Poles would benefit but the whole camp but perhaps individual favours, like individual help or individual advice, might have perhaps been given more to a Pole than to a Jew or a Frenchman, but is that something for which she ought to be blamed?

The witness, Mr le Drullonco, has told the Court how all through the camps he was in they were all trying to keep in groups of nationalities. He told the Court that he was always a member of the French group, though he was not a Frenchman, and I think it is very natural when you are in a concentration camp and trying to survive to keep amongst your own nationality because you feel more safe; you feel that somebody is perhaps going to help you.

The accused has told the Court under what conditions she worked. She has told you she did not seek the job of lager altester at Auschwitz for her own sake; her friends advised her to do so. The same thing happened at Belsen camp and I leave the Court to decide it.

In volume 6 page 14 Dr. Birko says: "I did know that when Starostka came quite a number of prisoners expressed a wish that they would prefer her to be lager altester instead of the old one". She goes on and says: When she arrived (at Belsen) I know only that I do not think that many particular complaints against her were heard against her".

X I think this explains that Starostka was advised and influenced by her friends to try and get the job and that she was not a bad lager altester. The nine remaining witnesses have not said she was a bad lager altester. When she arrived in Belsen there was quite a number of prisoners who wanted her to be again a lager altester.

To sum up what I have said, if the Court are satisfied about the part that Starostka played in Auschwitz, being herself a prisoner, that prisoners did benefit from what she did under difficult conditions, and that she fulfilled what the prisoners expected and hoped her to achieve under these difficult and risky conditions, I ask the Court to say that she did not sell herself body and soul to the Germans. She never ceased to be a prisoner and because she was a prisoner, an internee, herself she could not achieve more, but while she was helping the prisoners she had to retain the confidence of the Germans and that is why she had to keep the impression among the Germans and the other internees that she was severe and strict and give a certain amount of formal satisfaction to the Germans otherwise she would have been quickly dismissed. As I have said, Dr. Birko said that many prisoners at Belsen when she arrived wanted her to be lager altester instead of the old one.

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A The next accused is Helena Kopper. Helena Kopper is accused only of illtreating prisoners while she was a block altester and camp policewoman at Belsen. She did agree that she has beaten prisoners while she was block altester of Block 205. She did agree that she had to get the prisoners on appel and had to enforce order and discipline, that she was responsible for the food distribution and she agreed that the beating took place then.

< The prosecution witnesses Guterman, Synger, Koppel and Furstenberg who has made an affidavit, while alleging beatings against her never have said specifically that the beatings took place while she was the block altester of Block 224. I ask the Court to accept that these beatings took place in Block 205 only and in this respect to believe the testimony of the accused.

I will now take, with your permission, the specific allegations of illtreatment and comment on the evidence brought by the prosecution. The first allegation of illtreatment is the one referred to by Guterman about herself when she was forced to kneel down during a parade. The accused has given us her explanation of this order to Guterman to kneel down; it was because she stole some marmalade and poured water in what was left of this marmalade which was supposed to be distributed to the prisoners. Apart from this what seems to be very unlikely is that when an S.S. aufseherin came on the spot and asked Kopper why Guterman was kneeling, and Guterman gave her the explanation and the S.S. aufseherin said to Kopper "I think it is time she stood up" Kopper said: "No, I am here to keep order; she will kneel as I tell her". I think that is very unlikely for a prisoner, even a block altester, to say such a thing to an S.S. aufseherin of importance like Ehlert, because Ehlert was an important one, because she is contradicting an order she has given. That suggests a prisoner, a block altester, is in far greater power on the appel parade than an aufseherin is.

The second incident related to by Guterman is with regard to a woman called Fischer. Fischer is supposed to have been forced to kneel in wet weather during an appel and as a result of that she died three weeks later. Guterman in cross-examination said that about 30 women were dying daily in the block. How could Guterman know that Fischer died three weeks after this incident as a result of this kneeling? She might well have died from typhus or from starvation or any other disease.

✓ Another remark about the kneeling is this. Kopper has said herself she did force prisoners to kneel. She did not do it very often. She said she did it in the case of Guterman. Why did Kopper force the prisoners to kneel? Why did she say: "Guterman, you are going to kneel during parade". I think the explanation is this. She herself while she was in Auschwitz, while she was in Ravensbruck, had been forced to kneel down very often. The Court will find throughout the transcript reference being made by different prosecution witnesses to kneeling - Litwinska, Stein, and so on. They all say it was a custom in Auschwitz to force people to kneel down and hold stones in their hands. The only thing she said was she often told them to kneel down.

The third incident is with regard to a woman with swollen limbs who was forced to attend Appel. Here there are some discrepancies between the different witnesses who refer to the same case. Guterman has stated that the girl in question went on parade after being forced by Kopper. She went on parade and then she fainted after a short time. She lay on the ground until the end of the parade and afterwards she was taken to hospital and after three days she died. I want the Court to remember the words "She lay on the ground until the end of the parade". That is important, because Synger in her statement says that when she went on the parade she fainted all right but they asked Kopper if she could not be allowed to return to the block. Synger says Kopper did not agree to it but what Kopper agreed to was to take a chair, to bring a chair on the parade, and then the girl sat on the chair and was sitting there until the parade was over and it is only after that that she was taken to hospital and again, apparently, she died three days later. I think that is a very material discrepancy in these two statements about the same incident.

Guterman says about this: "I know her in the same way as I know all the other women from the block". When she was asked how could she remember such an incident and how well she knew the girl in question, in a block where there was between 800 and 1,000 prisoners, how can she know the girl just as well as she knew the rest of them when there were 30 women dying every day - was it possible to remember an incident like this, to remember that the girl died three days later.

Another incident of ill-treatment is brought forward by Koppel. It is about herself. She says she has been beaten by Kopper, beaten so terribly across the head for asking for food at night that she was unconscious during the whole night. Furstenberg in her affidavit tells a story - which, of course, it was not possible for me to prove was the same, but it appears to be exactly the same. Furstenberg says a sick woman missed her food and asked Kopper for it. She was beaten over the head and kept lapsing into unconsciousness and three or four days later she died. Koppel has said she came back from hospital and she missed her food and that while asking for the food she was beaten and she lost consciousness, and I think it is right to say that the incident mentioned by Koppel about herself and by Furstenberg about the sick woman are exactly the same incident, but Koppel did not die; Koppel was a witness. Furstenberg says three or four days later she died. Again this sentence "three or four days later she died". Every woman who it is alleged was ill-treated by Kopper seems to have died three or four days later; that seems to be a general feature.

About the evidence given by Koppel my learned friend, Major Canfield, has already made comment and, therefore, I do not propose to go through it again.

The next incident is another beating, which is referred to by Koppel, of a woman who during an Appel asked Kopper to excuse her. Kopper did not want to and beat her and this woman died. This is the only incident where death seems to be alleged to have taken place so shortly after a beating. Koppel, Synger, Guterman and Furstenberg all lived in the

same block and surely if there was a case like this they all would have known about it? If they would have known about it why should they refer to a case of beating or kneeling and say this woman died three days later and not refer to an incident where a woman died on the spot, which I think is an incident which would remain far longer in the memory of a witness than an incident of a beating with an alleged death three or four days later?

Rosenberg in her statement on page 121 of the bundle of affidavits says that while Kopper was a camp policewoman in March ran after a girl and beat her because the girl asked for food. In this respect Kopper has said herself that when she was camp policewoman she did not have anything to do with food distribution and I think it is quite clear that her duties were more or less in the camp, they were not concerned with one block, and there I think it must either be a mistake or an imaginary fact.

When asked if she did distribute food fairly Synger replied that it did vary. The Court has heard, on the contrary, the evidence given by Ehlert about the beating of Kopper. She said that she sent some people to search the room where Kopper was living and they found a colossal amount of foodstuff hidden there. When I asked Ehlert what type of food they found Ehlert said it was bread, bacon and cheese. She said that this food which was found there did not come from the prisoners' cookhouse; it was food which the prisoners usually did not get. Therefore, in my submission, what Kopper says about this unfair food distribution should be believed because if she was able to obtain food from different sources than the food which the prisoners did receive she would not be interested in depriving her fellow prisoners of what they would receive; she would be far more likely to have recourse to bacon or cheese than to turnip soup.

✓ (Kopper has said about the beatings, that she always used to beat with her hand or with her belt. In this respect all the deponents and all the witnesses seem to agree. Synger, Guterman and Furstenberg, all say that she only used to beat with a belt and occasionally she used to use some other implement, but as a rule she used to beat with a belt.

There is another matter. In my submission if Kopper was a spy the way the prisoners understood that she was spying for the S.S. and that she was reporting prisoners for small or big offences committed against discipline or against the rules laid down by the camp staff, what kind of a spy would she be if everybody knew she was a spy. Would anybody commit an offence knowing that Kopper, if being on the spot, would go and report it? She would not probably be afraid of complaining about kapos, about other functionaries, because she would know nothing more unpleasant would happen to her than it did happen already.

I tried to find out from the witnesses a specific incident of reporting and Szafran gave this example: "She worked in various kommandos in order to inform the German authorities about the behaviour of the prisoners". She was then asked: "Where did you get that information from?" and she replied: "Because after she left our kommando several of us found themselves in penal kommandos". In my submission this is no explanation at all.

✓ (The other incident is this beating which took place, the beating of Kopper by the other block altester. She has told the Court a different story and has given a different picture of what did happen from what Ehlert has said and, therefore, I leave it to the Court to judge for themselves where the truth lies. The defence of the accused has been, and is, that after a hard time at Ravensbruck and at Auschwitz after a period of nearly four years she arrived at Belsen and became then a block altester, a position for which she was not suited. She says herself that she asked Gollasch and she asked Starostka to remove her from that job. Synger says "Before the morning roll call, after we had been wakened up, instead of allowing us to parade quietly she started beating us and caused confusion".

Starostka has said: "In my opinion Kopper was the least suitable person for the job of block altester because through the great sufferings and hardships she had to endure during her long stay in concentration camps she was in a state of complete exhaustion and on the verge of a nervous breakdown. I told her that she should stop her hysterical behaviour during the parades". The Court will remember that once she got a less responsible job, that of camp policewoman, she changed considerably. I asked Frieda Walter if she knew Kopper as a camp policewoman and she said "Yes" and she said as a camp policewoman she never saw Kopper beating anybody.

Regina Bialek in her statement, exhibit 19 on page 6, says: "As far as I know Kopper did not inflict any serious injury on those that she beat", and this is, I think, what it really was: she was a very nervous person and she would probably lose her temper when something was wrong, or when something happened in a way she did not like, and she probably would start hitting the girls with her belt or her hand without causing any serious injury. I invite the Court, therefore, to say, considering her past hardships and her will to cease functioning as a block altester, that she is not guilty of wilful and malicious illtreatment of prisoners; at the time she was not responsible for what she was doing because she was on the verge of a nervous breakdown. This concludes Kopper's case.

THE JUDGE ADVOCATE: I do not want to make my remarks to the Court any more involved than they need be on the law, but if you begin talking about a witness not realising what she was doing we do make a practice in our courts of asking counsel or defending officer as the case may be whether the submission is that the prisoner was insane, because if you do that I have to embark upon the law of insanity in regard to crime. I take it you are not putting it so high; you are merely saying that she was not under full control?

LT. JEDRZEJOWICZ: Yes, at the time she was in Belsen.

THE JUDGE ADVOCATE: It is not a suggestion she was insane?

LT. JEDRZEJOWICZ: No.

THE JUDGE ADVOCATE: May I take it that it is not?

LT. JEDRZEJOWICZ: Yes, certainly. The next accused is Polanski. He is alleged to have been an assistant block altester in Block 12 over a period from the 4th April till the 15th April, 1945 and, as such, he is accused of beating prisoners when they were leaving the block to go to work, beating a man called Deutsch, another one called Sandor Engel, and another one called Burger, and beating to death a man called Jacobovitch, and then there is a small allegation of stuffing a piece of ditty rag into the mouth of a prisoner.

All three deponents have known Polanski or rather they have gone together with him as they say they were only eight days in the same block, No. 12. After that, after the 15th April, they were separated again and one of them met Polanski again on the 1st July in Belsen. The two others identified the accused on the 4th and 9th July while he was in prison. In my submission may be the one who recognised him in the concentration camp knew him personally from Block 12 or from another block, but what weight can the Court attach to the identification made by the two other deponents. The interval of three or eight days in my submission has given time to Sandor Engel and to Deutsch to get the story from Burger and when they came to the prison to identify him they knew all about him from their friends.

All the inmates and functionaries of Block 12 who have been in this Court giving evidence have denied that this man has ever been in Block 12. Schlomowicz has agreed to being the block altester of Block 12 for the three last days before the liberation and has denied all knowledge of Polanski having any function at all in his block. Sczpolinski, who has been

in Block 12 for a longer period of time than Schlomowicz says that Polanski has never been assistant block altester or stubendienst or anything else. The defence witnesses have all said that they all knew much longer than the deponents, they have been together with him in Auschwitz in Hanover, Neuengamme in Hamburg and finally in Belsen. They all say when they arrived in Belsen Polanski was two or three days in Block 12 and then went away and moved into Block 16. They are quite definite that Polanski has never had any function in Block 12 or in Block 16, and even more to prove that he could not have had any position is, I think, this: the witness Rakocay and the witness Krajewski said that for the few last days before the liberation they were all dragging corpses together into the pits. If Polanski was a man in a position like that of assistant block altester or block altester or even stubendienst he would not be dragging corpses and, therefore, there is no period of time, even the shortest possible, left between the time when he arrived at Belsen and the British liberation during which Polanski could have been the block altester or assistant block altester in Block 12 and, in my submission, there must be either malicious invention on the part of the deponent or what I would call an error in persona.

The defence have shown that he was a good and kind man to his fellow prisoners both before he came to Belsen and after the liberation. Zylberdukaten, transcript 13 page 24, says: "I know him only from the time after the arrival of the British troops; he was very good at that time. His own defence witnesses have said that he was a very good man before he reached Belsen. Why should he have changed? Why should he while he was himself dragging corpses go on beating other people who were working too slow or for trying to avoid working at all?"

I think, therefore, there is no need for me to go into details of specific allegations because, in my submission, those facts may be either imaginary or may be true, may have happened, but in any case they do not concern this accused. In my submission the Court must believe the defence witnesses and even the prosecution witnesses in this respect, because they have all proved themselves reliable on this point.

One thing more about this accused is that the prosecution has been trying to get from some of my witnesses information about this Polish committee which was working and who apparently did not have anything against Polanski and who sent Polanski round the camp after the British liberation trying to find out if there were any allegations against functionaries.

To prove that a committee like this was operating, and it was not the only one which was operating, I refer to the evidence given by Capt. Singleton in transcript volume 3 page 24 where Capt. Singleton says: "There was a committee of prisoners in the camp which was called the International Committee, and they were asked to state and produce cases against such people who had behaved in this brutal manner."

The first certain information that I got was on the 20th April. Schlomowicz himself in his evidence says that he got cigarettes from a Czech committee, therefore I think it is obvious to the Court that there was an International Committee in operation in Belsen and this International Committee probably consisted of other national committees and if Polanski was in touch with this committee for a considerable time he probably was a man against whom really nobody in Block 12 or Block 16 had anything against.

My next one is Ostrowski. He is accused by six Russians of beating prisoners in block 19 during food distribution; of beating the internees to force them to leave the block and to go on appeal; and of beating to death a Frenchman or a Belgian whose name was Albert. Ostrowski has stated when giving evidence, so has his witness Salomon, that he was in bed in block 19 the whole time between his arrival at Belsen and the British liberation. They both say he had no function whatever and did not even help with the food distribution.

A Burgraf who was in the same block helping with food distribution says himself he never saw Ostrowski helping with the food distribution. He was ill and was in bed which was not behind the partition. His bed was in the main part of the block.

X The witness Salomon has told the court that it was from the entrance in the block against the opposite wall, and it was not behind a partition. The court knows that all the functionaries were living in a space behind a partition in the block where they had their beds. Well, if he was not sleeping or lying behind this partition he certainly was not a member of block 19.

Then the question must arise why did the six Russians accuse him of ill-treating and killing his fellow prisoners? Well, if one goes through the evidence which has been given in this case, the court will find Ostrowski saying that he knew one of the six Russians who attacked him in Bergen. The one whom he knew was a Stubendienst in block 18 in Dora. The same Russian was one of the first to be brought by Sergeant Seammans to identify him in prison. Sergeant Seammans in volume 14 page 15 has told the court how this identification was carried out. He said they would enter the cell two or three at a time, and "if I took two, they were both confronted with him, or if I took three the three were confronted with the prisoner". Well, I must first of all draw the court's attention to this very irregular method of identification. May I submit to the court how I understand the whole affair started and ended.

Obviously one of the deponents - quite possibly the one who has been the Stubendienst in block 18 who must have known Ostrowski very well because Ostrowski says he was in block 18 - must have had a sort of personal grievance against this man. They started to fight, and Ostrowski was brought by the police to the police station. He was put into a cell and then the military police started investigating the cause of this man being beaten, and what the men who had beaten him had against him. The ex-stubendienst was one of the first to bring an allegation against him. He was also one of the first to identify him in prison. Then the others were brought in, but again they were brought in to corroborate the statement of the first two. They already had knowledge of what the others had said, and they had really corroborated this story but they did it rather badly, because the court will find that in each of those affidavits there are a certain amount of discrepancies. For instance, some say he was a camp policeman. The others say he was a blockmaster of block 19. Again, others say he was a capo.

Furthermore, two of them, one called Ivanov and the other called Karchenikow say they came together on the 9th or 8th of April 1945, and the other two, Sulima and Njkrasow say they arrived at Belsen at the end of March 1945. Fromsky says that he was in Belsen and saw Ostrowski arrive on the 5th April 1945. The first four say they arrived with the same transport to Belsen in which Ostrowski is alleged to have been. Why then, do some say they arrived at the end of March and the others give the date 8th April?

Again, the deponent Sulima alleges that Ostrowski was a capo in his block at Dora, and the deponent Njkrasow says Ostrowski was a capo of his working party. If he was the capo of the block, probably Stubendienst as he himself says, he could not have been a capo on the working party.

Two of the deponents are not sworn and have not signed, and there is only a statement made by the interpreter and by the serjeant who was doing the investigation that those two affidavits are written by the interpreter and Serjeant Seammans on information they gathered in preliminary investigations. Again, those statements are of very little value to the court, because they were not checked by the deponents, and it is quite possible that the reconstruction of the rough notes taken by the serjeant and the interpreter might have been very inaccurate.

THE JUDGE ADVOCATE: Would you give me the two statements again?

LT. JEDZEJOWICZ: Exhibit 96, page 191 of the bundle. That is Fromsky. The other one is Kalonikow, exhibit 49 page 78 of the bundle. The court has heard that Ostrowski has been fighting on the Russian front in 1939, and that he was wounded. The prosecution have tried to suggest that this might have been the reason, when he was a subordonst at Dora, that he treated the Russians not too well as he treated the other nationalities, Poles, French, Italians, and so forth who were in the same block or in the same B12 kommando. Well, I think that can work both ways. If he was fighting on the Russian front, those four Russians may have been doing so as well, and if he did not like the Russians, it is equally as probable that the Russians did not like him. Therefore, I do not think that that is a material point. In my submission, the court should far more weight to the statements of Ostrowski and his defence witnesses than to the affidavits, because the court can satisfy themselves as to the credibility of his testimony.

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The next accused is Burgraf. First of all this man was recognised as being a subenaltester of block 19, and as such he is alleged to have killed one man called Grabunasky and some 50 other prisoners over a period of four or five days during food distribution. Burgraf and his witness Trzos both denied this. They both said he was never a block or subenaltester but merely somebody who was asked by the blockaltester to help in preventing people from getting into the block and trying to get a second helping. Trzos said his duty was to maintain order during food distribution and to prevent prisoners from getting food twice. He was not the only one to have this function. The blockaltester would post the men at the doors and at the windows of the block in order to prevent those prisoners who, having once had their mug of soup, left the block through those openings and endeavoured to rejoin the queue. Apparently it was during this time, while he was carrying out these duties, that the accused Burgraf is alleged to have killed 50 prisoners during four or five days.

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Well, the first fact which I suggest appears to throw some doubt on this matter is the fact that while there was a food distribution in block 19 there must have been another distribution of food in block 21. From the plan which has been given by the prosecution in this court, block 19 and block 21 are neighbouring blocks, and I think it is quite fair to say that while prisoners were getting their food in block 19, those in block 21 were getting their food just the same. Therefore, what would appear to be strange is that while in block 19 people were trying to force their way through to try and get food twice, in block 21 the deponent seems to have spent his time looking through the window of his block 21 at what was going on during the food distribution in block 19. In my submission, it is very doubtful that the deponent was really watching the food distribution in block 19, because he was himself probably trying to get food twice or preventing others from doing so in block 21. If, as is alleged, Burgraf did kill 50 internees during food distribution, why is it none of the prisoners from his own block 19 have seen it? The murder of 50 people during such a short space of time just before the liberation of the camp must surely have been remembered by the inmates of block 19 if it did in fact occur. Not a single allegation is made against the accused Burgraf by an inmate of block 19. It is made by someone who was in block 21.

With regard to the specific allegation about the killing of the man called Grabunaski. Burgraf while giving evidence said he remembered hitting a man who tried to get food from block 19 although he was not an inmate of that block. Burgraf said he endeavored to explain to the man that he could not be allowed to draw food from block 19 and the man got rather aggressive and a fight started. The accused does not remember an incident when he hit and killed a man.

The description given by the deponent again raises a lot of doubt, in my submission, as to his credibility. He says that Burgraf was at the top of the stairs whilst the other man was at the foot of the stairs. Then he goes on and says: "By the time I had arrived downstairs Burgraf had re-entered his block". This gives the impression that to enter a block one had to climb a certain number of stairs, and I say a certain amount of stairs, because the witness says: "By the time I had arrived downstairs Burgraf had re-entered his block". Well, we have not heard anybody in this court say that to enter a block one had to mount a considerable number of stairs.

When I asked the witness Trzos to relate to the court the conversation he had with the man who is alleged to have made this deposition, he said: "I asked him why he accused Burgraf, and he said: 'Because once when we were unloading grenades Burgraf hit me in the face' and he also said he was kicked by Burgraf because he smoked a cigarette. I said to him for one hit like that you accuse a man, and he replied: 'Yes, because apart from that I saw Burgraf hit a man on the arm in such a way that the man died'".

In my submission, if the court is going to accept that the witness is reliable, I think they must accept from him that when he relates a fact he is going first of all to relate the more serious matter; but he accuses him first of all of hitting the man on the face for smoking a cigarette, and then as sort of corroborative matter he goes on to say that the reason he did accuse him was because the accused hit a man on the arm and the man died. It would appear from the witness that it is far more important to accuse Burgraf of having hit a man across the face than of having killed a man. Again, he is supposed to have hit this man on the arm in such a way that he died. Well, I submit it is improbable that a person would die as a result of having been hit on the arm, especially, as it is stated, to die at once. In the affidavit it is said the man was hit on the back of his head, that he fell immediately, was attended to, and after three hours he died. There is a discrepancy in the whole of this affidavit, and I submit that the conversation which is alleged to have taken place between this witness and the deponent may also cause a certain amount of doubt in the minds of the court.

This witness said: "I met Adam Marcinkowski a week ago and I told him that I am a witness in the Belson Trial". The prosecution has failed to produce this witness, although it seems very obvious this witness was living in Belson. When a colossal crime, the killing of 50 persons over a period of four or five days, is alleged, it is a very serious accusation; and I think it must be clear that the deponent was not treating it with the seriousness it deserved if in fact it happened. Therefore, I ask the court to disbelieve the affidavit and to believe what has been said in this court by the accused and his witness.

The last accused I represent is Antoni Audziog. He is accused sometimes of being a stowaway and sometimes of being a block-alterer in block 12. In this capacity he is accused of having killed a man called Grunzweig on the 12th April 1945, and of having killed a Russian in five minutes through beating. He is also accused of having killed hundreds of prisoners for not giving him gold and valuables when he asked them.

First of all, ^{it} has been proved that Aurdziog has never been a blockaltester of block 12, therefore he never was as Pinkus described him in exhibit 97. Polanski has also said that he was merely one of the two junior stubendienst in his block. The senior stubendienst was a man called Adam. His duties, as described by himself and by those witnesses, were to bring the food containers from the cookhouse to the block and then to distribute and serve the food to those prisoners who were sitting on the floor in rows of five waiting to be served. Then his duty was to wash up the mugs.

He was also responsible for cleaning the floors. That was about all he was responsible for in the block.

d / With regard to this question of the gold and valuables, none of the witnesses have said that they saw any transaction being done in block 12 by anybody. They never saw any gold during the time they were in Belsen concentration camp. None of those witnesses have said that the accused Aurdziog beat or ill treated prisoners. The only thing which the accused agreed and which was confirmed by Andrzejowski was that when a strong prisoner was trying to get a share of food which was destined for a sick person, he would give him a box on the ears or a slap on the face to keep him quiet. He was very much ^{more} concerned in carrying out his duty of feeding the prisoners than with going round the block hitting people because they had no gold to give him.

u / The allegation concerning this killing of the Russian together with the other functionaries of the block has been explained by the accused and by his witness. The blockaltester Schlomoivioz has also said that never, while he was in the block, was there any beating which resulted in death committed by the accused Aurdziog.

Again, in my submission, these statements against

Aurdziog remind me very much of the statements in regard to Ostrowski.

Again there is the identification of the accused while he was in Hanover,

and the police asking for his documents. He was recognised there and at

once, as a result of this identification, he was put in prison.

That was on the 4th July 1945.

The same day Filo Pinkus made a statement. He made it to a functionary of this police office, to a German, and while he was doing this three other Jews were present, and instead of having four affidavits we have one and three statements, in which it was said: "I was present at the interrogation of my former fellow prisoner Pinkus Filo. His statements correspond in every way with the truth and I confirm them as my own". If they were not present during the interrogation of Pinkus the Court might have thought that perhaps the four statements would not correspond so well the way they do now, or they tried to.

The next step was done by the French officer, Captain Pipien, and his Serjeant interpreter, Le Fort, which was told to the Court in great detail by Aurdzieg. I quite realise that to the Court it is difficult to believe or not what Aurdzieg has said about this very strange interrogation, but I will remind the Court that just in the same way as the Defence has asked for Major Champion to be called and to be cross-examined on points like identification, the way the affidavits were made, and so on, I have asked for Captain Pipien also to be produced in Court. None of them were, for the reason first of all that Captain Pipien was, as I was told, very ill and in no way could he attend this Court.

On the other hand, on the 13th September, 1945, Serjeant Le Fort has made an affidavit which has been handed to the Court, a very short one, in which he says this: "I hereby certify that the deponent himself" - he refers to Aurdzieg - "and with his own hand signed this written confession". That is a point the accused never denied, but what he denies is this, that he signed it freely and voluntarily.

What is strange to me, in my submission, is why Serjeant Le Fort was away four days before the trial started, and could not have been brought down and produced as a witness to destroy perhaps imaginary description of what has happened in this prison which the accused has put forward. In my submission, Serjeant Le Fort was not produced because he was unable to tell the story different from what the accused has said, and that is why he sort of confines himself to saying: "I hereby certify that the deponent with his own hand signed his confession".

Now if the Court looks at this confession and compared the confession with the statement made by Pinkus, the Court will see that this confession was forced upon the accused. Point after point and paragraph after paragraph of the statement made by Pinkus. In the first paragraph it is said: "I was amongst those assigned to his block, Awdziec received us with blows and hit us with stools, iron bars, rubber truncheons" and so on. Again in the first paragraph of the confession: "I acknowledge having beaten prisoners on their arrival in the block".

Then comes the story of Grunzweig, the painter, who on the morning of the 12th April, 1945, did not want to do his work as he felt too weak: "Awdziec had some object in his hand, what it was I am now unable to say, and beat Grunzweig with it until he collapsed and died".

Then comes the story of killing this Russian and so on, and then it goes on about having assisted Adam in getting jewels from the prisoners. Point after point these officials got when they came to the prison. They got this statement and they were interrogating the accused on each paragraph, and on each paragraph they got the same answer: "I acknowledge having done it; I acknowledge having done it; I acknowledge having done it".

To this same confession there is another document which is attached by the Provisional Government, which is the deposition of Bialkiewicz and Melamed Chain. Apparently, judging from the first paragraph this man Bialkiewicz has been sworn in. It says: Before us, Captain Pipien assisted by his secretary interpreter Serjeant Le Fort, there appeared Bialkiewicz Michal aged 17 years", and so on, "who swore to tell

the truth, the whole truth, and nothing but the truth". But this document has not been signed by Captain Pipien and has not been signed by Serjeant Le Fort either.

After that there is another deposition of Melamed Chain. He was not sworn and he was not mentioned in the first paragraph, and one does not know really how he got in this document.

My submission, therefore, is that in this case the Court should not attach any weight whatsoever to this bundle of documents produced by the Prosecution, and should instead receive the evidence which has been given in this Court by the different witnesses and by the accused himself.

To sum up what I have said on behalf of all the accused I say this. < Those who were functionaries in Belsen are Kopper, Burgraf and Audziog. Kopper was a blockaltester and so on, Burgraf and Audziog were helping in the distribution of soup, and to give a picture of the carrying out of their duties I propose to read to the Court parts of Mr. Le Drullence's evidence where he says: "Then you went out with your little portion, and the rest was more or less like an ordinary fowl house. I suppose you have seen a hen with a worm and five or six chasing after it. We were the same with our soup. We had to keep on giving furtive looks behind and chasing from one corner to the other so as not to drop even a spot of rather precious food". Later on he said: "Actually quite a few methods were tried but failed absolutely" - this is about what the prisoners and staff tried to do to prevent people getting an extra helping of food.

He goes on: "(Q) Did you ever see internees trying to rejoin the queue after they had had their ration? (A) Yes, all sorts of schemes were tried for that; that was quite natural. People were stationed at all the windows and at the doors or breakages through the side of the hut to prevent people doing that. In fact cunning was met with cunning".

If you take especially Burgraf and Audziog, would they not be, during those last days in Belsen concentration camp, more guilty of helping the prisoners to starve and to die by allowing those prisoners, mad from hunger, to get themselves their food, to get it the way they liked, and the amount they wanted?

< Now all those three arrived at the end of March or in the first days of April. Can they be responsible for the conditions which were in the camp or were in the block? Could they control them? Could they help really the prisoners to survive?

Polanski and Ostrowski, though alleged to be functionaries at Belsen, denied it and the witnesses also denied that they were functionaries. >

Starostka, on the Auschwitz charge is alleged to be concerned together with the camp staff in killing and ill-treating internees. She told you her story and why she wanted a job as lageraltester, and in this respect she has been proved right by her witnesses. But to prove her story beyond any doubt under the present conditions is very difficult, and to make that a little clearer I will give an example which I have taken from different films I have seen during this war.

Suppose the accused was a musician engaged by a restaurant to play at dinner time and Germans would come and have their food there. Suppose she was playing well and the Germans were satisfied and were on good terms with her, but while she was playing suppose she was sending a secret message to the Allies. She would not know who was receiving the message, and the one who was receiving the message would not know who was sending it. After the war she might be accused of collaboration. She has not got anybody to defend her; nobody to witness what her role was; nobody

able to prove her real identity. What a dramatic situation it would be, and I ask the Court to believe that this case is very much similar to the example I have given. She is anyhow perhaps in a more favourable position because she has had a few witnesses who did know what was happening when they were and when she was in this concentration camp.

The accused has told the Court: <"If I wanted to help the prisoners I had to gain the confidence of the German authorities." I had to keep the appearances, these deceptive appearances, that I am getting on well with the German authorities otherwise I could not be of any assistance to the prisoners and that was the prime object of my holding the position".>

I do not propose to argue at length on the concerted action charge, because a large amount of points have been made already on this subject.

My submission is this. The collective responsibility, as the learned Prosecutor intends to use it in this case does not and cannot work upwards and downwards along the different lines of the functions by any of the concentration camp staff.

I will endeavour to explain it by examples. Let us take it that if a Section Leader ill-treats his men, the platoon commander, the battalion commander may and will be held responsible if it is proved they should and could stop it. The collective responsibility here definitely works upwards, but if the battalion commander or company commander ill-treats his men, platoon commanders and section leaders will not and cannot be held responsible for those happenings. In this case there cannot be collective responsibility because it cannot work downwards. If it did then the charge would be correct in respect of Kopper, it would be accepted to find her guilty with all those men in the first charge of being together concerned as parties in ill-treating Kopper herself. The same thing, in my submission, applies to the principal of the collective responsibility and it cannot work sideways.

The other point is this. <It is accepted in all civilised countries that one is allowed to disobey the superior order if the carrying out of this order would entail the commission of a crime, but why is this subordinate allowed to disobey such an order? In my submission because, in all civilised countries he expects to get protection. He knows where to go for protection and he is sure that in the end he will be protected.

It would, in my submission, be absurd to apply this rule in a concentration camp, especially in respect of prisoners on functions. Were they really in a position and in the right to disobey an order entailing a crime and seek protection somewhere above and really get it? The answer is obviously no.

THE PRESIDENT: We do not propose to call on the learned Prosecutor to address the Court tonight, and we will call on him at 0930 tomorrow morning.

(At 1630 hours the Court adjourns until 0930 hours, Tuesday, 13th November, 1945).